Supreme Court of the United States

OCTOBER TERM, 1965

No. 847

NICHOLAS deB. KATZENBACH, ATTORNEY GENERAL OF THE UNITED STATES, ET AL., APPELLANTS

vs.

JOHN P. MORGAN AND CHRISTINE MORGAN

No. 877

NEW YORK CITY BOARD OF ELECTIONS, ETC., APPELLANT

vs.

JOHN P. MORGAN AND CHRISTINE MORGAN

APPEALS FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

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[fol. 1]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 1915-65

[File Endorsement Omitted]

JOHN P. MORGAN AND CHRISTINE MORGAN, PLAINTIFFS

v.

NICHOLAS DEB. KATZENBACH, as Attorney General of the United States, DEFENDANT

COMPLAINT FOR DECLARATORY JUDGMENT AND INJUNCTION—Filed August 6, 1965

Plaintiffs, by their attorney, Alfred Avins, complaining of the defendant, respectfully allege as follows:

1. Jurisdiction of this Court is invoked under the Voting Rights Act of 1965, Sec. 14(b); and under Title 28, U.S.C., Sections 2201, 2282, and 2284.

2. Plaintiffs are both duly registered voters of the City and State of New York, County of Kings, and have been, and are now fully qualified to vote under the laws of the State of New York, as well as under the Constitution and laws of the United States, for government officials of the County of Kings, the City of New York, the State of New York, and the United States.

3. The Constitution of the State of New York, Art. II, § 1, provides in pertinent part as follows: ". . . no person shall become entitled to vote . . . unless such person is also able, except for physical disability, to read and write English." Pursuant thereto, Section 150 of McKinney's New York Election Law enforces this provision.

4. Section 4, subd. (e)(1), (2), Voting Rights Act of 1965, provides:

> (1) Congress hereby declares that to secure the rights under the fourteenth amendment of persons educated in American-flag schools in which the predominant classroom language was other than English, it is necessary to prohibit the States from conditioning the right to vote of such persons on ability to read, write, understand, or interpret any matter in the English language.
>
> [fol. 2] (2) No person who demonstrates that he has successfully completed the sixth primary grade in a public school in, or a private school accredited by, any State or territory, the District of Columbia, or the Commonwealth of Puerto Rico in which the predominant classroom language was other than English, shall be denied the right to vote in any Federal, State, or local election because of his inability to read, write, understand, or interpret any matter in the English language, except that in States in which State law provides that a different level of education is presumptive of literacy, he shall demonstrate that he has successfully completed an equivalent level of education in a public school in, or a private school accredited by, any State or territory, the District of Columbia, or the Commonwealth of Puerto Rico in which the predominant classroom language was other than English.

5. Pursuant to the provisions set forth in Paragraph 4 above, Article II, § 1 of the Constitution of the State of New York, and Section 150 of the Election Law of New York, enacted pursuant thereto, will be rendered unenforceable upon adequate proof of an eighth grade education.

6. Approximately 700,000 persons who have migrated from the Commonwealth of Puerto Rico live in New York City. Of this number, approximately 59 percent read and write only the Spanish language. Many of these Spanish-speaking residents of New York City are of voting age and live in the County of Kings.

7. Plaintiffs allege that under Section 4(e)(1) and (2) of the Voting Rights Act of 1965, large numbers of Spanish-speaking persons who are unfamiliar with the English language would be entitled to vote in the City of New York and the County of Kings notwithstanding that they would not be qualified to vote under New York law. Because most of the information about political issues in New York City is printed in the English lan-
[fol. 3] guage, such Spanish-speaking persons would be unfamiliar therewith. The exercise of the franchise by such persons pursuant to federal law, but in violation of state law, will dilute the effect of plaintiff's vote.

8. Section 4(e)(1) and (2) of the Voting Rights Act of 1965 is unauthorized under the Fourteenth Amendment and hence violates the Tenth Amendment, and deprives plaintiffs of their rights under the Fifth Amendment and the Ninth Amendment to the Constitution of the United States.

9. Under the Voting Rights Act of 1965, the Attorney General is authorized to enforce the aforesaid sections of the statute.

WHEREFORE, plaintiffs pray:

(1) That a Statutory Three-Judge Court District Court be convened pursuant to Sections 2282 and 2284, of Title 28, United States Code;

(2) That this cause be advanced on the docket for a speedy hearing thereof;

(3) That a Declaratory Judgment be issued declaring that Section 4(e)(1) and (2) of the Voting Rights Act of 1965 is in excess of Congress' power to enact and is unconstitutional; and

(4) That an injunction be issued enjoining defendant from taking any steps to enforce the aforesaid statutory provisions; and such other and further relief as to the Court may seem just and proper.

/s/ Alfred Avins
c/o Suite 311
2000 F Street, N.W.
Washington, 6, D.C.
Attorney for Plaintiffs

[fol. 4]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 1915-1965

[File Endorsement Omitted]

[Title Omitted]

NOTICE TO ADMIT—Filed August 20, 1965

SIR:

PLEASE TAKE NOTICE, that you are hereby requested to admit the truth of the matters set forth in the annexed affidavits of Alfred Avins and Anthony O'Keefe, made for Supreme Court, New York County, pursuant to Rule 36(a), Federal Rules of Civil Procedure, or to serve a refusal to admit by August 29, 1965.

Dated: August 19, 1965

/s/ Alfred Avins, Dr. Jur.
Attorney for Plaintiffs
c/o Suite 311
2000 F Street, N.W.
Washington 6, D. C.

[CERTIFICATE OF SERVICE Omitted in printing]

[fol. 5]

ATTACHMENTS TO NOTICE TO ADMIT

SUPREME COURT: NEW YORK COUNTY

Index No. 12412-1965

In the Matter of the Application of

ANTHONY O'KEEFE, PETITIONER

v.

NEW YORK CITY BOARD OF ELECTIONS, consisting of James M. Power, Thomas Mallee, Maourice J. O'Rourke, and John R. Crews, RESPONDENT

AFFIDAVIT

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss:

ALFRED AVINS, being duly sworn, desposes and says:

1. I am attorney for petitioner and make this affidavit in support of the annexed motion. This affidavit is made to illustrate the reasonableness of the New York law in requiring voters to be able to read and write English.

2. I have investigated the publications of the State of New York which deal with governmental affairs and which an informed voter might want to read to keep himself well informed of what is going on in State government. The large majority are printed only in the English language. The following list of materials printed only in the English language is illustrative, rather than exhaustive: Governor's messages; Journal of the Legislature; Reports of Legislative Committees; Bills introduced into the Legislature; Legislative Manual which contains information about State Government (1364 pages) and is published annually; New York Red Book (965 pages); Regulations published by the New York Secretary of State; State Department administrative reports; Reports of sundry state agencies to the Governor printed for public inspection.

3. The following additional material are published only in English: Constitution of New York State; Constitutional amendments; Laws of New York State, Local Laws (Municipal Ordinances) of New York City; Reports of New York Courts and proceedings therein; Reports of the Judicial Conference.

4. Debates in the State Legislature, New York City [fol. 6] Council, and U.S. Congress are conducted only in English language, and all proceedings in the New York and federal courts are conducted only in the English language.

5. I have ascertained from the City Record office that all of its material is published only in English. This includes the daily City Record, including the minutes of the City Council and Board of Estimate, (a Specimen copy of August 13, 1965 is included herewith as an exhibit); and the City Budget (a Specimen copy for Fiscal Year 1965-66 is included as an exhibit); Real Estate Tax Evaluations; Directory (Green Book); Charter; Local Laws; Department Regulations, and other official city documents.

6. On the federal level, material published only in English includes most official publications dealing with the Federal Government. Included as illustrative are: U.S. Congressional Record; Code of Federal Regulations; U.S. Constitution and U.S. Code; Statutes at Large; Reports of Federal Courts; Congressional Directory; Reports of Administrative Agencies such as National Labor Relations Board, Federal Communications Commission, etc.; Reports of Congressional Committees; Hearings Before Congressional Committees; and numerous other documents. In fact, a person reading only Spanish could not read Senator Kennedy's speech in the Congressional Record supporting his right to vote since that speech is only printed in English.

7. A person reading and writing only Spanish would therefore not be able to read and understand a large number of documents of local state or national significance which would make him a better-informed voter.

ALFRED AVINS

The undersigned, attorney of record, for petitioner, hereby affirms that the foregoing affidavit is true, under penalty of perjury, pursuant to R. 2106, New York Civil Practice Law and Rules.

Dated: August 16, 1965

ALFRED AVINS

[fol. 7]

SUPREME COURT: NEW YORK COUNTY

Index No. 12412-1965

In the Matter of the Application of

ANTHONY O'KEEFE, PETITIONER

v.

NEW YORK CITY BOARD OF ELECTIONS, consisting of James M. Power, Thomas Mallee, Maourice J. O'Rourke, and John Cr. Crews, RESPONDENT

AFFIDAVIT

ANTHONY O'KEEFE, being only sworn, desposes and says:

1. I am the petitioner in this case and make this affidavit in support of the motion to restrain the Board of Elections from violating New York State law by registering non-English speaking persons.

2. I have lived in New York City for 30 years, and am a retired journalist by profession. I had, prior to retirement, been active in politics, and at one time was an American Labor Party county committeeman and was on the ballot in primary fights. Within my experience, the large majority of election material in New York City always has been printed only in English, including such things as pamphlets, posters, advertisements in newspapers, etc.

3. I have ascertained from Editor & Publisher Yearbook (1965), that there is only one Spanish language newspaper printed in New York City, viz: *El Diario-Law Prensa*, with an average circulation, Monday through Friday, of 78,289, and on Saturday, of 72,541. By way of contrast, the following information from the 1964 New York World Telegram & Sun World Almanac indi-

cates the daily English language newspapers in New York City and their circulation:

Names of Papers	Daily Circulation (Thousands)	Sunday Cir.
Times	682 M	1305 M
Herald Tribune	360 M	430 M
News	2056 M	3158 M
Post	328 M	256 M
Journal-American	602 M	760 M
World Telegram & Sun	443 M	(None)
Long Island Press	296 M	369 M
Long Island Star Journal	96 M	(None)
Newsday (Nassau Co.)	345 M	(None)

El Dirario-La Prensa is considerably smaller than the English-language papers, even the tabloids. For example, [fol. 8] on Monday, Aug. 16, 1965, El Diario-La Prensa contained 32 pages while the Daily News contained 56 pages. Similar, and in some cases larger, discrepancies, are to be found in the case of other newspapers.

4. I have ascertained from the Radio Advertising Bureau of New York City that there are twenty-four radio stations in New York City of which only three carry Spanish language programs. These three are: WAPO, WHOM, and WLIV. Of the seven major television stations broadcasting in New York City, one carry regular Spanish language programs.

5. On the basis of my over-all experience as a professional journalist for many years, as well as the specific research noted above, I can state that a person knowing only English in New York City has access to far more information about municipal, state, and national government, politics, and current events, than does a person knowing only Spanish.

ANTHONY O'KEEFE

Sworn to before me this day of August, 1965

[fol. 9]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 1915-65

[File Endorsement Omitted]

[Title Omitted]

MOTION FOR LEAVE TO ADD PARTIES—Filed September 8, 1965

Comes now the plaintiffs in the above-entitled action and move to add as parties the New York City Board of Elections, consisting of James M. Power, Thomas Mallee, John R. Crews, and Maurice J. O'Rourke, as additional defendants, and further moves for leave to file and serve an amended complaint against defendant Nicholas deB. Katzenbach and the New York City Board of Elections, a copy of which is hereby annexed, and further move that service of the summons and amended complaint on additional defendants New York City Board of Elections shall be made by Morris Handel, or in the alternative by the United States Marshall for the Southern District of New York or one of his deputies as he may appoint, and for such other and further relief as to the Court may seem just and proper.

Dated: September 7, 1965

/s/ Alfred Avins
ALFRED AVINS
Attorney for Plaintff

[fol. 10]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 1915-65

[File Endorsement Omitted]

[Title Omitted]

ORDER GRANTING LEAVE TO ADD PARTIES AND TO FILE AND SERVE AMENDED COMPLAINT, ETC.—
September 8, 1965

Upon oral motion made by plaintiffs in open court, as supplemented by written motion, for leave to add additional parties, made September 7, 1965, and for other relief, it is

ORDERED, that plaintiff have leave to add as additional parties, defendant the New York City Board of Elections, consisting of James M. Power, Thomas Mallee, John R. Crews, and Maurice J. O'Rourke, and it is

ORDERED, that plaintiff have leave to file and serve an amended complaint against the defendants, and it is

ORDERED, that service of a copy of the summons and amended complaint on additional defendants New York City Board of Elections may be made by Morris Handel, or in the alternative by the United States Marshall for the Southern District of New York, or one of his deputies, and it is

ORDERED, that the hearing on plaintiff's motion for the convening of a three-judge statutory court be, and the same is, continued to September 15, 1965, at 10:00 a.m. and it is

ORDERED, that copies of this order may be served on the defendant and additional defendants personally or by mail.

Dated September 8, 1965

/s/ Alexander Holtzoff
U.S.D.J.

[fol. 11]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 1915-65

[File Endorsement Omitted]

JOHN P. MORGAN and CHRISTINE MORGAN, PLAINTIFFS

v.

NICHOLAS DeB. KATZENBACH, as Attorney General of the United States, and NEW YORK CITY BOARD OF ELECTIONS: consisting of James M. Power, Thomas Mallee, Maurice J. O'Rourke, and John R. Crews, DEFENDANTS

COMPLAINT FOR DECLARATORY JUDGMENT AND INJUNCTION—Filed September 10, 1965

Plaintiffs, by their attorney, Alfred Avins, complaining of the defendant, respectfully allege as follows:

FOR A FIRST CAUSE OF ACTION:

1. Jurisdiction of this Court is invoked under the Voting Rights Act of 1965, Sec. 14(b): and under Title 28, U.S.C., Sections 2201, 2282, and 2284.

2. Plaintiffs are able to read and write the English language and are both duly registered voters of the City and State of New York, County of Kings, and have been, and are now fully qualified to vote under the laws of the State of New York, as well as under the Constitution and laws of the United States, for government officials of the County of Kings, the City of New York, the State of New York, and the United States.

3. The Constitution of the State of New York, Art. II, § 1, provides in pertinent part as follows: ". . . no person shall become entitled to vote . . . unless such person is also able, except for physical disability, to read and

write English." Pursuant thereto, Section 150 of McKinney's New York Election Law enforces this provision.

4. Section 4, subd. (e) (1), (2) Voting Rights Act of 1965, provides:

> (1) Congress hereby declares that to secure the rights under the Fourteenth Amendment of persons educated in American-flag schools in which the predominant classroom language was other than English, it is necessary to prohibit the States from conditioning the right to vote of such persons on ability to [fol. 12] read, write, understand, or interpret any matter in the English language
>
> (2) No person who demonstrates that he has successfully completed the sixth primary grade in a public school in, or a private school accredited by, any State or territory, the District of Columbia, or the Commonwealth of Puerto Rico in which the predominant classroom language was other than English, shall be denied the right to vote in any Federal, State, or local election because of his inability to read, write, understand, or interpret any matter in the English language, except that in States in which State law provides that a different level of education is presumptive of literacy, he shall demonstrate that he has successfully completed an equivalent level of education in a public school in, or a private school accredited by, any State or territory, the District of Columbia, or the Commonwealth of Puerto Rico in which the predominant classroom language was other than English.

5. Pursuant to the provisions set forth in Paragraph 4 above, Article II, § 1 of the Constitution of the State of New York, and Section 150 of the Election Law of New York, enacted pursuant thereto, will be rendered unenforceable upon adequate proof of an eighth grade education.

6. Approximately 700,000 persons who have migrated from the Commonwealth of Puerto Rico live in New York City. Of this number, approximately 59 percent read and write only the Spanish language. Many of these Spanish-

speaking residents of New York City are of voting age and live in the County of Kings.

7. Plaintiffs allege that under Section 4(e)(1) and (2) of the Voting Rights Act of 1965, large numbers of Spanish-speaking persons who are unfamiliar with the English language would be entitled to vote in the City of New York and the County of Kings notwithstanding that they would not be qualified to vote under New York law. Because most of the information about political issues in [fol. 13] New York City is printed in the English language, such Spanish-speaking persons would be unfamiliar therewith. The exercise of the franchise by such persons pursuant to federal law, but in violation of state law, will dilute the effect of plaintiff's vote.

8. Section 4(e)(1) and (2) of the Voting Rights Act of 1965 is unauthorized under the Fourteenth Amendment and hence violates the Tenth Amendment, and deprives plaintiffs of their rights under the Fifth Amendment and the Ninth Amendment to the Constitution of the United States.

9. Under the Voting Rights Act of 1965, the Attorney General is authorized to enforce the aforesaid sections of the statute.

10. The Attorney General of the United States has actively enforced Section 4 of the Voting Rights Act of 1965 in respect to those state and local election officials who have refused to comply therewith, and has made statements in substance and effect which indicate that if the New York City Board of Elections refuses to comply, he will proceed to enforce the statute against them.

FOR A SECOND CAUSE OF ACTION:

11. Repeats and realleges paragraphs 1-10 as if set forth herein.

12. Defendant New York City Board of Elections is the agency charged by the law of New York State with registering persons in the City of New York to vote.

13. Under New York State Constitution, Art. II, § 1, and Election Law, Secs. 150, 168, and 201(1), it is the duty of the defendant New York City Board of Elections

to register to vote only such persons as are able to read and write the English language.

14. Nothwithstanding New York law, defendant New York City Board of Elections has announced publicly that it intends to disregard New York law and comply with Sec. 4(e) of the Voting Rights Act of 1965, and on information and belief is actually doing so, by registering persons unable to read and write English.

[fol. 14] 15. In so acting, the defendant New York City Board of Elections is diluting the votes of plaintiffs for the forthcoming municipal election to be held in November, 1965, and for further elections.

16. On information and belief, the defendant New York City Board of Elections is disregarding New York State law and obeying the Voting Rights Act of 1965, because of the fact that the Attorney General of the United States will enforce the said statute against them if they do not comply.

WHEREFORE: plaintiffs pray:

(1) That a Statutory Three-Judge Court District Court be convened pursuant to Sections 2282 and 2284, of Title 28, United States Code;

(2) That this cause be advanced on the docket for a speedy hearing thereof;

(3) That a Declaratory Judgment be issued declaring that Section 4(e)(1) and (2) of the Voting Rights Act of 1965 is in excess of Congress' power to enact and is unconstitutional; and

(4) That an injunction be issued enjoining defendants from taking any steps to enforce, execute, obey or comply with the aforesaid statutory provisions; and such other and further relief as to the Court may seem just and proper.

/s/ Alfred Avins
ALFRED AVINS
c/o Suite 311
2000 F Street, N.W.
Washington 6, D.C.
Attorney for Plaintiffs

[fol. 15]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 1915-1965

[File Endorsement Omitted]

[Title Omitted]

NOTICE TO ADMIT—Filed September 15, 1965

SIRS:

Please take notice, that you are hereby requested to admit that the annexed copy of the New York City Record, dated June 23, 1965, purporting to contain the official New York City Budget for the fiscal year 1965-1966, constitutes a true copy of the Official Journal of the City of New York for the aforesaid date, and in fact contains a true copy of the official expense budget of New York City for fiscal year 1965-1966, as published by New York City, or to serve your denial not later than ten days from the service of this notice.

Dated: September 13, 1965

/s/ Alfred Avins
ALFRED AVINS
Attorney for Plaintiffs
Suite 311
2000 F Street, N.W.
Washington, D. C.

[Proof of Service
(omitted in printing)]

[fol. 16]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 1915-1965

[File Endorsement Omitted]

[Title Omitted]

NOTICE TO ADMIT—Filed September 15, 1965

SIRS:

Please take notice, that you are requested to admit that the annexed copy of the New York City Record, dated August 13, 1965, constitutes a true copy of the Official Journal of the City of New York for the aforesaid date, or to serve your denial not later than ten days from the service of this notice.

Dated: September 13, 1965.

/s/ Alfred Avins
ALFRED AVINS
Attorney for plaintiffs
Suite 311
2000 F Street, N.W.
Washington, D. C.

[Proof of Service
(omitted in printing)]

[fol. 17]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action 1915-65

[File Endorsement Omitted]

[Title Omitted]

MOTION FOR SUMMARY JUDGMENT—Filed September 20, 1965

Comes now the plaintiffs, and move this Court for summary judgment against the defendants, for the relief demanded in the amended complaint. In support of the said motion, there is herewith annexed a memorandum of law consisting of the plaintiffs' points and authorities. In addition, in support of this motion, plaintiffs annex copies of a notice to admit dated August 25, 1965, in *O'Keefe* v. *New York Board of Elections*, U.S. District Court, Southern District of New York, 65 Civ. 2554, and an affidavit of Anthony O'Keefe, sworn to 19 August 1965, and an affidavit of Alfred Avins, affirmed August 16, 1965 both annexed to the said notice to admit, plus a response of the New York City Board of Elections sworn to 1 September 1965, the original copies of which are on file in the office of the Clerk, United States District Court, Southern District of New York. Plaintiffs also respectfully request that this Court read in support of this motion copies of the New York City Record of June 23, 1965, and August 13, 1965, copies of which have heretofore been filed accompanied by a notice to admit, with the Clerk of this Court. In addition, plaintiffs state in support of the said motion for summary judgment that the New York City Board of Education Adult Education Division conducts classes to teach English in its schools without any money charge or payment during both the day and the evening for foreign language immigrants who come to New York City to live, and that a native

of Puerto Rico who migrated to New York City and spoke only Spanish would be entitled to attend such classes free of charge and learn to read and write English, if he so desired.

Dated: September 17, 1965.

/s/ Alfred Avins
ALFRED AVINS
Attorney for plaintiffs
Suite 311, 2000 F St. N.W.
Washington 6, D. C.

[CERTIFICATE OF SERVICE Omitted in printing]

[fol. 18]

ATTACHMENTS TO MOTION FOR SUMMARY JUDGMENT

NOTICE TO ADMIT

SIRS:

PLEASE TAKE NOTICE, that you are hereby requested to admit the truth of the matters set forth in the annexed affidavits of ALFRED AVINS, and ANTHONY O'KEEFE, made for Supreme Court, New York County, pursuant to Rule 36(a) of the Federal Rules of Civil Procedure, or to serve a refusal to admit not later than ten days from today.

Dated: August 25, 1965

/s/ ALFRED AVINS

TO: Corporation Counsel
New York City

Affidavit of Anthony O'Keefe

ANTHONY O'KEEFE, being duly sworn, deposes and says:

1. I am the petitioner in this case and make this affidavit in support of the motion to restrain the Board of Elections from violating New York State law by registering non-English speaking persons.

2. I have lived in New York City for 30 years, and am a retired journalist by profession. I had, prior to retirement, been active in politics, and at one time was an American Labor Party county committeeman and was on the ballot in primary fights. Within my experience, the large majority of election material in New York City always has been printed only in English, including such things as pamphlets, posters, advertisements in newspapers, etc.

3. I have ascertained from Editor & Publisher Yearbook (1965), that there is only one Spanish language newspaper printed in New York City, viz: *El Diario-La Prensa*, with an average circulation, Monday through Friday, of 78,289, and on Saturday, of 72,541. By way of contrast, the following information from the 1964 New York World Telegram & Sun World Almanac indicates the daily English language newspapers in New York City and their circulation:

[fol.19]

Names of Papers	Daily Circulation (Thousands)	Sunday Cir.
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Long Island Star Journal	96 M	(None)
Newsday (Nassau Co.)	345 M	(None)

El Diario-La Prensa is considerably smaller than the English-language papers, even the tabloids. For example,

on Monday, Aug. 16, 1965, El Diario-La Prensa contained 32 pages while the Daily News contained 56 pages. Similar, and in some cases larger, discrepancies, are to be found in the case of other newspapers.

4. I have ascertained from the Radio Advertising Bureau of New York City that there are twenty-four radio stations in New York City of which only three carry Spanish language programs. These three are: WAPO, WHOM, and WLIV. Of the seven major television stations broadcasting in New York City, one carries regular Spanish language programs.

5. On the basis of my over-all experience as a professional journalist for many years, as well as the specific research noted above, I can state that a person knowing only English in New York City has access to far more information about municipal, state, and national government, politics, and current events, than does a person knowing only Spanish.

/s/ ANTHONY O'KEEFE

Sworn to before me this 9th day of August, 1965

HERMON SIMON
Notary Public

AFFIDAVIT OF ALFRED AVINS

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss:

ALFRED AVINS, being duly sworn, deposes and says:

1. I am attorney for petitioner and make this affidavit in support of the annexed motion. This affidavit is made to illustrate the reasonableness of the New York law in requiring voters to be able to read and write English.

[fol. 20] 2. I have investigated the publications of the State of New York which deal with governmental affairs

and which an informed voter might want to read to keep himself well informed of what is going on in State government. The large majority are printed only in the English language. The following list of materials printed only in the English language is illustrative, rather than exhaustive: Governor's messages; Journal of the Legislature; Reports of Legislative Committees; Bills introduced into the Legislature; Legislative Manual which contains information about State Government (1364 pages) and is published annually; New York Red Book (965 pages); Regulations published by the New York Secretary of State; State Department administrative reports; Reports of sundry state agencies to the Governor printed for public inspection.

3. The following additional materials are published only in English: Constitution of New York State; Constitutional amendments; Laws of New York State, Local Laws (Municipal Ordinances) of New York City; Reports of New York Courts and proceedings therein; Reports of the Judicial Conference.

4. Debates in the State Legislature, New York City Council, and U.S. Congress are conducted only in English language, and all proceedings in the New York and federal courts are conducted only in the English language.

5. I have ascertained from the City Record office that all of its material is published only in English. This includes the daily City Record, including the minutes of the City Council and Board of Estimate, (a Specimen copy of August 13, 1965 is included herewith as an exhibit); and the City Budget (a Specimen copy for Fiscal Year 1965-66 is included as an exhibit); Real Estate Tax Evaluations; Directory (Green Book); Charter; Local Laws; Department Regulations, and other official city documents.

6. On the federal level, material published only in English includes most official publications dealing with the Federal Government. Included as illustrative are: U.S. Congressional Record; Code of Federal Regulations; U.S. Constitution and U.S. Code; Statutes at Large; Reports of Federal Courts; Congressional Directory; Reports of Administrative Agencies such as National Labor Relations

Board, Federal Communications Commission, etc.; Reports of Congressional Committees; Hearings Before Congressional Committees; and numerous other documents. In fact, a person reading only Spanish could not read Senator Kennedy's speech in the Congressional Record supporting his right to vote since that speech is only printed in English.

[fol. 21] 7. A person reading and writing only Spanish would therefore not be able to read and understand a large number of documents of local, state or national significance which would make him a better-informed voter.

/s/ ALFRED AVINS

The undersigned, attorney of record, for petitioner, hereby affirms that the foregoing affidavit is true, under penalty of perjury, pursuant to R. 2106, New York Civil Practice Law and Rules.

Dated: August 16, 1965

/s/ ALFRED AVINS

RESPONSE TO REQUEST TO ADMIT

In response to petitioner's request to admit the truth of certain matters set forth in affidavits of petitioner and of Alfred Avins, his attorney, which request was dated and served August 25, 1965, respondent states as follows:

1. With respect to the matters set forth in the affidavit of petitioner—

(a) Respondent admits the matter set forth in par. 1;

(b) Respondent cannot admit the matter set forth in par. 2 because respondent has no knowledge of petitioner's political activities or experience;

(c) Respondent denies "that there is only one Spanish language newspaper printed in New York City, viz: *El Diario-La Prensa*," as set forth in par. 3, since there are at least two other Spanish language newspapers printed in N.Y. City, but admits the circulations of the English language papers as set forth in said par. 3;

(d) Respondent denies that of the seven major television stations in New York City, only one carries regular Spanish language programs, and further denies that only three radio stations in New York City carry Spanish language programs—all as set forth in par. 4;

(e) Respondent cannot admit to the validity of the opinion, set forth in par. 5, that, based on petitioner's experience, persons literate in Spanish only have access to far less information than persons literate only in English, because a person literate only in Spanish—and, therefore, disqualified as a voter under the N.Y. Election Law—may understand English sufficiently well to enjoy all of the English language programs on radio and television. In addition, Mr. O'Keefe overlooks the fact that *quality* of reporting on radio, television and in newspapers, can be of far greater importance to an informed electorate than quantity.

2. With respect to the matters set forth in the affidavit of Alfred Avins, petitioner's counsel:

(a) Respondent admits facts setting forth the identity of the affiant and the purpose of his affidavit, all as set forth in par. 1.

(b) Respondent admits that a large majority of the official publications of the State of New York which deal with governmental affairs are printed only in the English language but cannot admit that voters normally keep themselves informed by reading: the Journal of the Legislature, Reports of Legislative Committees, Bills introduced

into the Legislature, the Legislative Manual, the New York Red Book, Regulations and Administrative Reports of State Agencies—all as specified in par. 2;

[fol. 22] (c) Respondent denies that the N.Y. State Constitution and amendments, N.Y. State and local laws, reports of judicial proceedings in N.Y. State are published only in English, as requested in par. 3;

(d) Respondent admits that legislative debates and judicial proceedings in N.Y. State are conducted only in the English language, as requested in par. 4;

(e) Respondent admits that all material printed in the City Record is published only in English, as requested in par. 5;

(f) Respondents admits that official United States Reports, such as the Congressional Record, Code of Federal Regulations, Statutes at Large, etc., are published only in English, as requested in par. 6;

(g) Respondent cannot admit the validity of the conclusory opinion set forth in par. 7 that a person reading and writing only Spanish—and, therefore, presumably unable to resort to original source material as published by governmental agencies, would "not be able to read and understand a large number of documents of local, state or national significance which would make him a better-informed voter"—because it is apparent that resort to both written and oral reports, in Spanish and English, summarizing such data would enable a person to understand the significance thereof even though he were not fully literate in English to the point that he could both read and write English. Respondent recognizes the indisputable fact that there are many thousands of persons who, through the practical necessity of everyday living in this State

fully understand English but have been unable to acquire an education in reading and writing that language. Radio, television and other secondary sources would fully inform such interested persons of the significance of important public documents and judicial proceedings—even more so than is the case with persons literate in English who are interested in neither primary nor secondary sources publishing government affairs.

LEO A. LARKIN
Corporation Counsel
City of New York
Attorney for Respondent

By /s/ MORRIS EINHORN
Asst. Corporation Counsel

Sworn to before me this 1st day of September, 1965.

DENNIS J. CONROY
Notary Public

[fol. 23]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 1915-65

[File Endorsement Omitted]

JOHN P. MORGAN and CHRISTINE MORGAN, PLAINTIFFS

v.

NICHOLAS deB. KATZENBACH, as Attorney General of the United States, and NEW YORK CITY BOARD OF ELECTION, consisting of JAMES M. POWER, THOMAS MALLEE, MAURICE J. O'ROURKE, and JOHN CREWS, ET AL., DEFENDANTS

UNITED STATES OF AMERICA, INTERVENOR

ORDER GRANTING UNITED STATES LEAVE TO INTERVENE—
September 20, 1965

Upon the oral motion of the United States of America for leave to intervene in this action, and the Court being of the opinion that the United States has the right to intervene herein under the provisions of 28 U.S.C. § 2403 and Rule 24(a) of the Federal Rules of Civil Procedure, it is

ORDERED that the motion of the United States of America for leave to intervene be and the same is hereby granted.

Dated: September 20, 1965

/s/ Alexander Holtzoff
United States District Judge

[fol. 24] * * *

[fol. 25]

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

September Term, 1965

Civil Action No. 1915-65

[File Endorsement Omitted]

JOHN P. MORGAN and CHRISTINE MORGAN, PLAINTIFFS

v.

NICHOLAS deB. KATZENBACH, as Attorney General of the United States, and NEW YORK CITY BOARD OF ELECTION, consisting of JAMES M. POWER, THOMAS MALEE, MAURICE J. O'ROURKE, and JOHN R. CREWS, ET AL., DEFENDANTS

DESIGNATION OF JUDGES TO SERVE ON THREE JUDGE DISTRICT COURT—September 21, 1965

The Honorable Alexander Holtzoff, United States District Judge for the District of Columbia, having notified me that a complaint has been filed in said court to enjoin the enforcement of Section 4(e) of the Act approved on August 6, 1965, Public Law 89-110, on the ground of its repugnance to the Constitution of the United States, it is

ORDERED pursuant to Sections 2282 and 2284 of Title 28, United States Code, that the Honorable Carl McGowan, United States Circuit Judge for the District of Columbia Circuit, and the Honorable Joseph C. McGarraghy, United States District Judge for the District of Columbia, are hereby designated to serve with the Honorable Alexander Holtzoff, United States District Judge, as members of the court to hear and determine this action.

/s/ Illegible
Chief Judge
United States Court of Appeals
for the District of Columbia Circuit

Dated: Sep. 21, 1965.

* * * *

[fol. 26]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 1915-65

[File Endorsement Omitted]

[Title Omitted]

OBJECTION TO REQUESTS FOR ADMISSION—
Filed September 23, 1965

In response to the written requests, served upon the defendant on September 15, 1965, that the defendant admit that the *New York City Record* dated June 23, 1965, and the *New York City Record* dated August 13, 1965, are true copies of the official journal of the City of New York for those dates, the defendant objects to making such admission upon the ground that the *New York City Records* for those dates and their contents are irrelevant to any issue in this case.

/s/ John C. Conliff, Jr.
JOHN C. CONLIFF, JR.
United States Attorney

/s/ St. John Barrett
ST. JOHN BARRETT
Department of Justice
Attorneys for Defendant

[fol. 27]

[CERTIFICATE OF SERVICE Omitted in printing]

[fol. 28]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 1915-65

[File Endorsement Omitted]

[Title Omitted]

PLAINTIFFS' SUPPLEMENTARY STATEMENT TO MOTION FOR SUMMARY JUDGMENT—Filed September 27, 1965

Plaintiffs desire to supplement their papers on their motion for summary judgment by filing certain statistics and an exhibit from the official records of the New York City Board of Education relative to the study and teaching of English to natives of Puerto Rico who migrate to New York City, and to thus aid this Court in taking judicial notice of these facts, which cannot be disputed.

The Board of Education of the City of New York has had considerable experience in the teaching of English to natives of Puerto Rico whose mother tongue was Spanish and who migrated without being able to read, write, or speak English to New York City. Several years ago, the Board completed a number of studies of this problem, which have been published, and are entitled:

WHO ARE THE PUERTO RICAN PUPILS IN THE NEW YORK CITY SCHOOLS—Puerto Rican Study, Research Report, Board of Education, 1956, by Samuel M. Goodman, Lorraine K. Diamond, and David J. Fox.

DEVELOPING A PROGRAM FOR TESTING PUERTO RICAN PUPILS IN THE NEW YORK CITY PUBLIC SCHOOLS (1959), by J. Cayce Morrison.

THE PUERTO RICAN STUDY, 1953-1957 (A Report on the Education and Adjustment of Puerto Rican Pupils in the Public Schools of the City of New York), Sponsored by the Board of Education of the City of New York

under a grant-in-aid from the Fund for the Advancement of Education (1958), J. Cayce Morrison, Director, 265 pages.

The last-mentioned study states at p. 238: "In October 1956 children rated as non-English speaking were found in 746 of the 817 public schools. . . ."

The following figures relating to adult education of the Board of Education of the City of New York are found in BOARD OF EDUCATION OF NEW YORK CITY, ANNUAL FINANCIAL AND STATISTICAL REPORT, 1963-1964, p. 18, which is the latest official report of the Board of Education:

Activity	Average Daily or Nightly Attendance	Cost of Instruction		Other Expenses of Education		Total	
		Proper Salaries & Expenses	Per Capita Per Annum	Administrative, Operation, etc.	Per Capita Per Annum	Total	Per Capita Per Annum
Evening Elementary	13,542	$1,331,906	$98.35	$306,958	$22.67	$1,638,864	$121.02
Evening High Schools	9,397	2,096,906	223.15	347,935	37.02	2,444,841	260.17
Evening Trade Schools	7,017	934,493	131.49	272,538	38.35	1,207,032	169.84
Day Classes for Adults	3,082	217,067	70.43	8,870	2.88	225,937	73.31
Summer Day Schools	26,989	1,318,172	48.84	155,346	5.76	1,473,519	54.60
Summer Evening Schools	6,992	196,271	28.07	31,040	4.44	227,312	32.51

While the Board of Education keeps no precise figures, and cannot by the nature of things do so, an official thereof in charge of adult education estimated that between 60% and 85% of the adults enrolled with it were foreign [fol. 29] or Puerto-Rican born and were enrolled for the purpose of learning or improving their English, depending on the class.

There is herewith enclosed the latest bulletin, 1965-1966, published by the Board of Education of New York City, listing adult education classes.

Respectfully submitted,

/s/ Alfred Avins
ALFRED AVINS
Attorney for plaintiffs
Suite 311
2000 F Street, N.W.
Washington, D. C.

[CERTIFICATE OF SERVICE Omitted in printing]

[fol. 30]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 1915-65

[File Endorsement Omitted]

[Title Omitted]

ANSWER—Filed October 6, 1965

Answering the petition of John P. and Christine Morgan, defendant New York City Board of Elections, by its attorney, Leo A. Larkin, Corporation Counsel of the City of New York, shows:

First Defense

The petition fails to state a claim sufficient to establish the jurisdiction of this Court over the subject matter.

Second Defense

The petition fails to state a claim against defendant upon which relief can be granted.

[fol. 31] *Third Defense*

Admits the allegations contained in par. 1, except denies statutory authority for the proceeding commenced by petitioners herein; admits the allegations contained in pars. 2, 3, 4, 9, 12, 13, and 14, but denies each and every other allegation of the petition.

Dated: September 28, 1965.

/s/ Leo A. Larkin M.E.
LEO A. LARKIN
Corporation Counsel of the
City of New York

[Certificate of Service Omitted in printing]

[fol. 32]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 1915-65

[File Endorsement Omitted]

[Title Omitted]

CROSS-MOTION FOR SUMMARY JUDGMENT—
Filed October 6, 1965

Comes now the defendant NEW YORK CITY BOARD OF ELECTIONS and, a motion for summary judgment against the defendants having been made by plaintiffs, the return date of which has not been specified, said defendant NEW YORK CITY BOARD OF ELECTIONS cross-moves—on such return date as may be fixed by the Court for the hearing of said motion for summary judgment—for judgment on the pleadings pursuant to Rule 12(c) dismissing the complaint for failure to state a claim upon which relief can be granted and for failure to state a claim sufficient to establish the jurisdiction of this Court over the subject matter.

Dated: September 30, 1965

/s/ Leo A. Larkin M.E.
LEO A. LARKIN, Corporation Counsel
of the City of New York,
Attorney for Defendant
Board of Elections

[fol. 33]

[CERTIFICATE OF SERVICE Omitted in printing]

[fol. 34]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 1915-65

[File Endorsement Omitted]

[Title Omitted]

ANSWER OF DEFENDANTS NICHOLAS DEB. KATZENBACH AND UNITED STATES OF AMERICA—Filed October 7, 1965

Nicholas deB. Katzenbach and the United States of America, defendants herein, answer the allegations contained in each numbered paragraph of the complaint, as amended and filed on September 7, 1965, as follows:

1. Jurisdiction of this Court is admitted.
2. The allegations of paragraph 2 are admitted.
3. The allegations of paragraph 3 are admitted.
4. The allegations of paragraph 4 are admitted.
5. The allegations of paragraph 5 are denied, but it is admitted by virtue of the provisions of Section 4(e) of [fol. 35] the Voting Rights Act of 1965, section 1 of Article II of the Constitution of New York and section 150 of the Election Code of New York are unconstitutional and unenforceable insofar as they purport to disqualify for voting any person who demonstrates that he has successfully completed the sixth primary grade in a public school in, or a private school accredited by, any state or territory, the District of Columbia, or the Commonwealth of Puerto Rico, in which the predominant classroom language was other than English.
6. The allegations of paragraph 6 are denied, but it is admitted that there are approximately 700,000 persons residing in New York City who have migrated or whose parents, or one of them, migrated from the Commonwealth of Puerto Rico. It is further admitted that many Spanish-speaking residents of New York City who are of voting age live in the County of Kings.

7. The allegations of paragraph 7 are admitted insofar as they allege that Spanish-speaking persons who live in the County of Kings, and who cannot read or write in the English language, and who would not be entitled to vote by the terms of Article II, section 1 of the Constitution of New York and section 150 of the Election Code [fol. 36] of New York, are nonetheless entitled and qualified to vote by virtue of Section 4(e) of the Voting Rights Act of 1965. It is denied that Spanish-speaking persons in New York City are unfamiliar with the political issues in the city and do not have adequate sources of information regarding such issues. Defendants do not answer the allegation that exercise of the franchise by persons qualified to vote under Section 4(e) of the Voting Rights Act of 1965 will dilute the effect of plaintiffs' vote, upon the ground that such allegation is not one of fact but is a conclusion of law.

8. The allegations of paragraph 8 are denied.

9. The allegation of paragraph 9 is admitted.

10. The allegation of paragraph 10 that the Attorney General of the United States has actively enforced Section 4(e) of the Voting Rights Act of 1965 is admitted; all other allegations in paragraph 10 are denied.

11. Insofar as paragraph 11 repeats and realleges the allegations of paragraphs 1 through 10 of the complaint, the defendants make the same answers set forth in paragraphs 1 through 10 above.

12. The allegations of paragraph 12 are admitted.

13. It is admitted that under the constitution and election laws of the State of New York it is the duty of the [fol. 37] defendant New York City Board of Elections to register to vote only such persons as are able to read and write the English language, except that under the Constitution and laws of the United States they may not refuse to register a person, for lack of such ability, who demonstrates that he has successfully completed the sixth primary grade in a public school in, or a private school accredited by, any state or territory, the District of Columbia, or the Commonwealth of Puerto Rico, in which the predominant classroom language was other than English.

14. The allegations of paragraph 14 are admitted.
15. The allegations of paragraph 15 are neither admitted nor denied inasmuch as they are not allegations of fact but are conclusions of law.
16. The allegations of paragraph 16 are denied.

/s/ John Doar
JOHN DOAR
Assistant Attorney General

/s/ John C. Conliff, Jr.
JOHN C. CONLIFF, JR.
United States Attorney

/s/ St. John Barrett
ST. JOHN BARRETT, Attorney
Department of Justice

[fol. 38]

[CERTIFICATE OF SERVICE Omitted in printing]

[fol. 39]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 1915-65

[File Endorsement Omitted]

[Title Omitted]

CROSS-MOTION FOR SUMMARY JUDGMENT—
Filed October 14, 1965

The plaintiffs having heretofore filed their motion for summary judgment, the defendants Nicholas deB. Katzenbach and the United States of America hereby file their cross-motion for summary judgment upon the ground that there is no substantial controversy regarding any material issue of fact in this case, and that the defendants are entitled to judgment as a matter of law.
[fol. 40] This cross-motion is based upon all of the pleadings and other papers heretofore filed in the case, and upon facts of which this Court may take judicial notice, all of which establish, without substantial controversy, that:

1. The only "American Flag Schools" within the meaning of Section 4(e) of the Voting Rights Act of 1965, in which a significant number of adult citizens of the United States have successfully completed the sixth primary grade in which the classroom language was other than English, are schools in Puerto Rico where the predominant classroom language is Spanish.

2. Congress could reasonably determine that in states in which literacy is a requirement for voting, the quality of the electorate in terms of education, political judgment, and moral character is not materially affected by providing that literacy shall be in either English or Spanish rather than exclusively in English.

3. Congress could reasonably determine that whenever there is a substantial body of voters who are illiterate in

the English language, but literate in another language, public officials, political candidates, and the various news media quickly and easily adapt to provide such voters substantially the same information on the issues and the candidates as is available to other voters.

[fol. 41] 4. Congress could reasonably determine that no undue burden would be placed upon state agencies and officials in adjusting their electoral processes to permit persons illiterate in English to vote.

5. Were it not for Section 4(e), the effect of the New York constitutional provision and statute here drawn in question would be—and indeed, previously was—to disenfranchise Puerto Rican residents of New York by reason of their having been educated in Puerto Rico.

6. There is no compelling reason in State policy for the State of New York, in fixing qualifications to vote, to distinguish between Puerto Ricans educated in schools in Puerto Rico in which, with the approval of Congress, Spanish is the predominant language, and Puerto Ricans educated in schools in Puerto Rico in which English is the predominant language.

7. Congress could reasonably determine, inasmuch as all public schools in Puerto Rico use Spanish as the predominant classroom language, that the effect of the New York constitutional provision and statute is to discriminate unreasonably against American citizens in the voting process upon the basis of their national origin.

8. There was a reasonable basis for Congress to determine that exclusion of Puerto Ricans from voting upon the ground of their illiteracy in English, although they [fol. 42] had completed six grades in a Spanish-language school in Puerto Rico, unreasonably and adversely affected the status and welfare of such Puerto Ricans as citizens of the United States and as former residents of a territory of the United States.

Upon the basis of the foregoing facts and in accordance with the rules of law discussed in the brief heretofore filed by the United States, it follows that Section 4(e) of the Voting Rights Act of 1965 constitutes appropriate legislation under Section 5 of the Fourteenth Amendment. This being so, the plaintiff has failed to

establish any basis for injunctive relief against the Attorney General of the United States and summary judgment should be rendered upon the pleadings.

It is the position of the defendants herein that there is a sufficient basis in the pleadings for a decision upon the constitutionality of the statute here in question without recourse to affidavits or other factual evidence. Inasmuch as plaintiffs have filed affidavits in support of their motion for summary judgment, defendants are attaching hereto, affidavits in support of their position that the statute is constitutional, which may be considered if the Court gives consideration to plaintiffs' affidavits.

/s/ John C. Conliff, Jr.
JOHN C. CONLIFF, JR.
United States Attorney

/s/ St. John Barrett
ST. JOHN BARRETT, Attorney,
Department of Justice

Attorneys for Nicholas deB.
Katzenbach and for the United
States of America

[fol. 43]

[CERTIFICATE OF SERVICE Omitted in printing]

[fol. 44] • • •

[fol. 45]

ATTACHMENTS TO CROSS-MOTION FOR SUMMARY JUDGMENT

AFFIDAVIT

COUNTY OF NEW YORK)
) ss.:
STATE OF NEW YORK)

My name is THOMAS MALLEE. I live at 252 East 61st Street, New York, New York. I am 78 years old and have lived in New York City all my life. I am a Commissioner of Elections and Secretary of the Board of Elections in the City of New York. I am one of the two Republican members of the four-man Board of Elections.

The Board of Elections supervises voter registration and the conduct of all elections in the City of New York. The Board prescribes the forms and procedures, in accordance with State law, to be used by all election officials in New York City. The Board distributes to the appropriate local election officials the materials to be used in the voter registration process throughout New York City.

Each of the five boroughs of New York City has a Chief Clerk for elections who supervises and implements in his borough the policies and procedures of the Board of Elections. For each of the over 700 election districts in New York City there is a board of elections consisting of four inspectors. These inspectors accept and pass upon applications for voter registration.

An applicant for voter registration may present himself at the central office in his borough at most times throughout the year. In addition, there are special local registration days when the district boards accept applica-
[fol. 46] tions at polling places. The only such local registration since August 6, 1965 occurred on September 24, 25 and 30 and October 1 and 2. Also during August of this year mobile units were placed at various locales in the election districts at which the local boards received applications for registration.

Prior to passage of the Voting Rights Act of 1965, on August 6, 1965, a person applying for registration to vote in New York City had to demonstrate that he had completed six grades at an approved school in which English was the language of instruction or, in the alternative, that he had passed a literacy test in English prepared by the New York Board of Regents and administered in New York City under the supervision of the Board of Education. A copy of the form of affidavit used by applicants to prove they met the education requirements is appended hereto as Attachment A. Copies of two versions of the Regents' literacy test are appended hereto as Attachments B and C. If an applicant could produce a school diploma or certificate showing that he satisfied the education requirement, no affidavit was necessary. The district board completed the prescribed application form for registration upon oral inquiry of the applicant, who then signed the form. A copy of the prescribed application form is attached as Attachment E to this affidavit.

All the procedures employed prior to passage of the Voting Rights Act of 1965 are still in use for applicants who qualify under the English literacy provisions of State law. On August 12, 1965 the Board of Elections, upon the advise of Leo Larkin, Corporation Counsel for the City of New York, prepared and sent to all Chief Clerks a letter stating that Section 4(e) of the Voting Rights Act of 1965 was in full force and effect. Attached [fol. 47] to this letter was a form of affidavit to be used by persons who now were eligible to register because they had attended at least six grades of an approved school in any State, Territory, or the Commonwealth of Puerto Rico where the language of instruction was other than English. This policy and procedure was immediately disseminated to the local boards of elections by the Chief Clerks. Attachment D hereto is a copy of the Board's letter to the Chief Clerks.

The Board of Elections is in the process of determining how many persons have qualified for registration by completing the new affidavit. These affidavits are the only evidence available to the Board of Election that an applicant qualified by reason of the provisions of Section 4 (e) of the Voting Rights Act of 1965. If an applicant

proved he met the non-English education requirement by producing a school certificate or diploma, there would be no difference between his application form and the application forms of English-speaking applicants.

/s/ Thomas Mallee
THOMAS MALLEE

Sworn to before me this 6th day of October, 1965.

/s/ James Siket, Jr.
JAMES SIKET, JR., Notary Public

State of New York No. 31-8993700
Qualified in New York County
Commission Expires March 30, 1966

[fol. 48] AFFIDAVIT

COUNTY OF NEW HAVEN)
) SS.:
STATE OF CONNECTICUT)

JOHN F. GRIFFIN, after first being duly sworn, did depose and say:

My name is JOHN F. GRIFFIN. I am Assistant Town Clerk for the City of New Haven, Connecticut, an office I have held since January 1964. My duties include attending sessions of the Board of Admissions for Electors in New Haven at times when the Town Clerk is unable to attend. In connection with these duties I have become familiar with voter registration procedures in New Haven.

Applications for voter registration in New Haven are received and passed upon by the Board of Admissions for Electors. This Board is made up of the Board Selectmen of New Haven and the Town Clerk. An applicant for

registration, except for certain service men and physically disabled, must appear personally before the Board. He must demonstrates his literacy by reading a short passage from the Constitution of the State of Connecticut. He must state under oath that he meets the residence requirements under Connecticut law and that all of the information he provides about himself is the truth. He orally provides biographical data which is placed on an application form. A copy of the Standard application form is appended hereto as attachment A.

Shortly after passage of the Voting Rights Act of 1965 my office was advised by the office of the Secretary of the State of Connecticut to comply with the provisions of [fol. 49] Section 4 (e) of the Voting Rights Act of 1965. The Board of Admission in New Haven thereafter prepared a written form on which applicants could show that they attended six grades in an approved school in a State or Territory or the Commonwealth of Puerto Rico where the language of instruction was other than English. The form is in English with a Spanish translation included. A copy of this form is appended hereto as attachment B. These forms have been available for use since sometime in the latter part of September. Prior to that time the Board had no occasion to implement Section 4 (e) of the Voting Rights Act. Since the forms were made available, approximately four or five persons, and certainly no more than ten, have qualified by signing them. The signed statement is attached to and filed with the elector's application form.

/s/ John F. Griffin
JOHN F. GRIFFIN

Sworn and subscribed to before me on this 6th day of October, 1965

/s/ Anna V. Daly
Notary Public
New Haven, Conn.

My Commission Expires April 1, 1969

[fol. 50] AFFIDAVIT

COUNTY OF)
) SS.:
STATE OF CONNECTICUT)

WILLIAM KELLER, after first being duly sworn, did depose and say:

My name is WILLIAM KELLER. I live at 2170 Park Avenue, Bridgeport, Connecticut. I am 45 years old and am in the insurance business in Bridgeport. I am also Town Clerk for the City of Bridgeport, an office I have held for the past eight years.

Applications for voter registration in Bridgeport are received and passed upon by the Board of Admissions for Electors. This Board is made up of the Board of Selectmen of Bridgeport and the Town Clerk. An applicant for registration must appear personally before the Board. He must demonstrate his literacy by reading three or four lines from a printed card bearing an excerpt from the Constitution of the State of Connecticut. He must state under oath that he meets the residence requirements under Connecticut law and that all of the information he provides about himself is the truth. He then orally provides biographical data which is placed on a questionnaire.

[fol. 51] Shortly after passage of the Voting Rights Act of 1965 my office was advised by the Secretary of State of the State of Connecticut to comply with the provisions of Section 4 (e) of the Voting Rights Act and allow persons to register irrespective of their literacy in English if they had completed six grades at an approved school in a State or Territory or the Commonwealth of Puerto Rico where the language of instruction was other than English. The Bridgeport Board of Admissions thereupon instituted the practice of exempting from the English literacy tests persons who signed a form of oath to the effect that they completed six grades at a non-English language school within the meaning of Section 4 (e) of the Voting Rights Act. The one member of the Board who speaks

Spanish or a Spanish-speaking clerk would explain the oath and the procedure to the affected applicants. A copy of the form of affidavit is appended hereto as Attachment A.

To date four applicants have qualified to vote in Bridgeport by reason of Section 4 (e).

/s/ William Keller
WILLIAM KELLER

Sworn to before me this 7th day of October, 1965.

/s/ Marie Giannini
Notary Public

[fol. 52] AFFIDAVIT

COUNTY OF HARTFORD)
) ss.: Hartford, Oct. 7, 1965
STATE OF CONNECTICUT)

ROBERT GALLIVAN, after first being duly sworn, did depose and say:

My name is ROBERT GALLIVAN. I live in Hartford, Connecticut. I am Town and City Clerk for the City of Hartford, a position I have held since 1960. From 1949 until 1960 I was Assistant Town Clerk.

Applications for voter registration in Hartford are received and passed upon by the Board of Admissions for Electors. This Board is made up of the Board of Selectmen of Hartford and Town Clerk. An applicant for voter registration must appear personally before the Board. He must demonstrate his literacy by reading a short passage from the Connecticut Statutes which is pre-selected by the Board. The Board tries to select passages that may be read easily. The applicant must state under oath that he meets the residence requirements under Con-

necticut law and that all of the information he provides about himself is the truth. He orally provides biographical data which is placed on a standard application form which the applicant signs. A copy of the standard application form is appended hereto as attachment A.

Shortly after passage of the Voting Rights Act of 1965 my office was advised by the office of the Secretary of State of the State of Connecticut to comply with the pro- [fol. 53] visions of Section 4 (e) of the Voting Rights Act and permit persons to whom it applies to register without regard to their literacy in English. Since passage of the Voting Rights Act on August 6, 1965 the Hartford Board has had two sessions for registration, one on September 1 and another on October 6. These session ran from 9 A.M. until 8 P.M. On those days the Board employed a Spanish interpreter to ask questions of Spanish-speaking applicants. The interpreter elicited the necessary information regarding the completion of six grades of education and if the applicant thereby qualified, a statement to this effect was typed on the back of his standard application form. The interpreter also elected from the applicant all the necessary biographical data required on the standard form and explained to the applicant that he must swears to the truth of all the information he provided. The applicants who so qualified were not required to read in English. Approximately fifty persons qualified to vote by reason of Section 4 (e) during those two days of registration. Four more days of registration will take place from October 13 through October 16.

Attachment B hereto is an application form containing the statement added to the forms of persons who qualify under Section 4 (e).

/s/ Robert Gallivan
ROBERT GALLIVAN

Sworn to before me this 7th day of October, 1965

/s/ Robert D. Delaney
Notary Public

My Commission Expires March 31, 1968

[fol. 54] AFFIDAVIT

COUNTY OF NEW YORK)
) ss.:
STATE OF NEW YORK)

STANLEY ROSS, after being duly sworn, did depose and say:

My name is STANLEY ROSS. I am the editor of the Spanish language newspaper, "El Eiempo," the offices of which are at 78 Fifth Avenue, Manhattan, New York.

El Tiempo is a weekly printed entirely in Spanish with a circulation of approximately 43,000. As of October 15, 1965, the paper will become a daily.

It is a general newspaper and contains such items as international, national, and local news, editorials, sports news, and other articles. We run a political column and as a public service print news regarding all candidates for elective office. For example, I have appended as attachment A reprints of articles on John V. Lindsay and Tim Costello which have appeared in El Tiempo. We do take an editorial position on political issues. Candidates are welcome to purchase advertising space in El Tiempo. It is my opinion that readers of my paper would be well informed on local, national, and international news.

The paper subscribes to the United Press International wire service from which we receive reports in both Spanish and English. We also subscribe to several non-wire minor news services whose items we receive by mail in [fol. 55] both Spanish and English. The English news service reports and items and any press releases or information we receive in English from local and state political leaders and office holders are translated into Spanish for publication.

The following Spanish newspapers are published in New York City:

Name	Approximate Circulation
1. El Diario-La Pensa (daily)	75,000
2. El Tiempo (weekly)	43,000
3. El Mundo Americano (daily)	10,000
4. Actualidad (weekly)	5,500

The above circulation figures are claims of the publishers with the exception of El Diario, whose circulation is reported by the Audit Bureau of Circulation. In addition to the above, Temas, a slick monthly with a claimed circulation of 8,500, is also published in Spanish in New York City. Several Spanish language magazines which are printed in Puerto Rico are also circulated in New York City.

To the best of my knowledge there are roughly 750 civic organizations in the Spanish-speaking community in New York City.

/s/ Stanley Ross
STANLEY ROSS

Sworn and subscribed to before me this 8th day of October, 1965.

/s/ Edward Kozlowski
Notary Public

EDWARD KOZLOWSKI
Notary Public, State of New York
No. 24-2187350
Qualified in Kings County
Term Expires March 30, 1967

[fol. 56] AFFIDAVIT

COUNTY OF NEW YORK)
) ss.:
STATE OF NEW YORK)

MR. A. L. ROSENTHAL, after being duly sworn, did depose and say:

My name is A. L. Rosenthal. I am the comptroller for the Spanish language newspaper, "El Diario-La Prensa," the offices of which are located at 164 Duane Street, Manhattan, New York.

El Diaria-La Prensa is published daily except Saturday. The Sunday edition is placed on the newsstands on Saturday. Circulation is approximately 75,000 per day. I would estimate that we have a "pass on readership" of about 300,000 per day. The paper is printed entirely in Spanish except for the lead editorial which is printed in both English and Spanish. We are a general newspaper featuring news and commentary on the local, state, national, and international levels. We try to publish all of the news that would be of interest to the Spanish speaking people and emphasize news concerning the Spanish speaking community and Latin America.

We include in the paper articles on local, state, and national politics. As elections draw near items of this sort become more newsworthy and are therefore emphasized. We provide space for debate between candidates and normally take a position before elections. Candidates may purchase advertising space in the paper. At one time or another, candidates for office at the national, state, and local levels have purchased space, but the bulk of our political advertising is more or less local.

[fol. 57] We have public service columns and, as a public service, have apprised the Spanish speaking people of the procedures and qualifications necessary to register to vote.

We subscribe to the United Press International and the Associated Press news services. The coverage we receive from these services is in both Spanish and English. For

publication in El Diario we translate into Spanish the reports received in English from the news services and any press releases and information from local and state political leaders and office holders.

/s/ A. L. Rosenthal
A. L. ROSENTHAL

Sworn and subscribed to before me this 8th day of October, 1965.

/s/ Lydia Ellorin
LYDIA ELLORIN
Commissioner of Deeds
City of New York 3-263
Certificate filed in Bronx County
Commission Expires May 25/67

[fol. 58] AFFIDAVIT

COUNTY OF NEW YORK)
) ss:
STATE OF NEW YORK)

LUIS ROMANACCE, after first being duly sworn, did depose and say:

My name is LUIS ROMANACCE. I am program director for radio station WADO, whose offices are located at 205 East 42nd Street, New York, New York.

WADO broadcasts entirely in the Spanish language. Its broadcast area covers the entire New York City Metropolitan area, including lower Connecticut and parts of New Jersey. The station broadcasts sixteen hours a day Monday through Friday, nineteen hours a day on Saturday and eleven hours a day on Sunday.

The station broadcasts a five minute news report every hour, a fifteen minute news report several times a day, and spot news when it happens. The station subscribes to the United Press International wire service in both Spanish and English. News reports include items on the international, national and local level. We also broadcast special events and discussion programs on topics of public interest and concern. The Puerto Rican Bar Association, the various city departments, the Board of Education, and the League of Women Voters have contributed material for such programs. Information regarding voter registration and elections is frequently broadcast.

Candidates for public office can and do purchase time for paid political announcements. There is a one-minute time limit on such announcements. Time was purchased [fol. 59] in 1964 by both presidential candidates. Both Senator Javitz and Senator Kennedy have purchased time on WADO. Recent mayoralty candidates Lindsay, Beame, and Screvane all purchased time on the station. All such campaign appeals are in Spanish.

On the basis of surveys and other information that has come to my attention, I estimate that there are approximately 1,400,000 Spanish-speaking people in the New York area. A professional survey conducted in the Summer of 1965 showed that for each quarter hour WADO is on the air, it reaches between 30,000 and 40,000 Spanish-speaking homes.

/s/ Luis Romanacce
LUIS ROMANACCE

Sworn to before me on the 7th day of October, 1965

/s/ Gilbert Feldberg
Notary Public

GILBERT FELDBERG
Notary Public, State of New York
No. 24-6259000
Qualified in Kings County
Term Expires March 30, 1966

[fol. 60] AFFIDAVIT

COUNTY OF NEW YORK)
) SS.:
STATE OF NEW YORK)

RALPH COSTANTINO, after first being duly sworn, did depose and say:

My name is RALPH COSTANTINO. I am program director for radio station WHOM, located at 136 West 52nd Street, Manhattan, New York. I have been in the radio business for 25 years.

WHOM broadcasts entirely in the Spanish language, and covers a broadcast area which includes the metropolitan area of New York City. I would estimate that in this area there are approximately 1,000,000 Spanish speaking people living in 220,000 households.

WHOM broadcasts five minutes of news each hour and bulletins as developed. The station is very news oriented. Each day there is a five minute newscast which emanates from the island of Puerto Rico and two fifteen minute news round-ups. The programming is typical of most radio stations in America except that it is in Spanish. We allow candidates to purchase broadcast time for campaign speeches.

WHOM has public service programs which include a roundtable discussion each Saturday on various subjects. One of these subjects was voting, including how to vote, when and where to vote, and other procedures and qualifications involved in voting. These public service [fol. 61] programs have cooperated with such agencies as the Water Department, the Police Department, the Fire Department, and the Health Department. The station also maintains an orientation center for Spanish speaking people where they can receive help with their problems and other information. As part of this service we have been handing out Board of Election affidavits for the City of New York. During the recent campaign for registration Senator Robert Kennedy spoke over radio WHOM encouraging registration. He was introduced in Spanish but spoke in English. His speech was immediately fol-

lowed by a broadcast of a Spanish translation of his speech.

WHOM subscribes to both the Spanish and the English United Press International wire news services. Coverage includes national, international, and local news. We translate the English reports which we receive from UPI and other sources into Spanish before it is broadcast. For example during the major elections we monitor the television coverage of the returns and rebroadcast these reports in Spanish.

/s/ Ralph Costantino
RALPH COSTANTINO

Sworn and subscribed to before me this 8th day of October, 1965.

/s/ Anthony J. Morelli
ANTHONY J. MORELLI
Notary Public, State of New York
No. 30-3012300
Qualified in Nassau County
Commission Expires March 30, 1966

[fol. 62] AFFIDAVIT

COUNTY OF)
) SS.:
STATE OF NEW YORK)

C. CARROLL LARKIN, after first being duly sworn, did depose and say:

My name is C. CARROLL LARKIN. I am the Manager of Radio Station WBNX whose offices are located at 801 Second Avenue, New York City. WBNX is a division of the United Broadcasting Company which has

Spanish language stations in Washington, D.C. and Miami, Florida. WBNX broadcasts in Spanish 19 hours Monday through Friday, 20 hours on Saturday and 7 hours on Sunday. The Broadcast area of the station includes the entire New York City metropolitan area.

WBNX broadcasts news every half hour, totalling roughly seven minutes of news each hour. We broadcast three 15 minute news programs daily at 7:30 P.M., 10:00 P.M. and 11:00 P.M. Also there is a one hour news, weather, and time program between 5:00 and 6:00 A.M.

The station subscribes to the United Press International Wire Service. This coverage includes national, international, and local news and is received by the station in both Spanish and English. All wire service reports received only in English which we use are translated at the station and broadcast in Spanish. The station also [fol. 63] broadcasts in Spanish public service announcements of items from such agencies as the Police Department, the Fire Department, the Red Cross, the Traffic Department, and the Water Department, among others. With respect to voter registration, we broadcast information regarding qualifications, times and places for voting, and voting procedures.

Candidates for public office frequently purchase time on WBNX for political announcements. Two candidates in the present Mayor's race have purchased time and national and State level candidates have done so in the past. All such announcements are in Spanish.

/s/ C. Carroll Larkin
C. CARROLL LARKIN

Sworn to before me this 8 day of October, 1965

/s/ Gilbert Feldberg
GILBERT FELDBERG
Notary Public, State of New York
No. 24-6259000
Qualified in Kings County
Term Expires March 30, 1966

[fol. 64] AFFIDAVIT

COUNTY OF)
) ss.:
STATE OF NEW YORK)

My name is Herman Badillo. I live at 6495 Broadway, Bronx, New York. I am a qualified attorney and certified public accountant. I was born in Caguas, Puerto Rico on August 21, 1929 and have lived in New York City since 1941. I am presently the Democratic candidate for Bronx Borough President and I participated in the September 1965 Democratic party primary in New York City.

My recently concluded primary campaign was conducted throughout the entire borough of the Bronx. It is my rough estimate that approximately fifteen per cent of the voters in the Borough speak Spanish. I made frequent speeches on a daily basis from August 3, 1965 to September 14, 1965 throughout the Borough, both on the streets and in various clubs. All my campaign speeches in sections of the borough where Spanish is spoken were given in part in Spanish. Approximately thirty thousand post cards in the Spanish language were sent out in support of my candidacy to registered voters in the Bronx. One such post card is attached to this affidavit. None of my campaign posters were in Spanish.

Numerous campaign meetings and rallies were held in my behalf in the Spanish language. The Mayor of the town of my birth, Caguas, Puerto Rico, and the Mayoress of San Juan, Puerto Rico both campaigned for me using Spanish in the Spanish speaking neighborhoods of the Bronx.

I used the Spanish-language newspaper "El Diario" to advertise and publicize my candidacy on a daily basis. I also prepared tape-recorded speeches in Spanish which [fol. 65] were broadcast on three Spanish language radio stations in New York City frequently. Arrangements for

these broadcasts were handled through the campaign headquarters of Mayoralty candidate Paul Screvane.

/s/ Herman Badillo
HERMAN BADILLO

Sworn to before me this 8th day of October, 1965

/s/ Ruth L. MacLaughlin
RUTH L. MACLAUGHLIN
Notary Public, State of New York
No. 31-7656265 Qual. in New York Co.
Certificate filed in New York County
Commission Expires March 30, 1966

[fol. 66] AFFIDAVIT

COUNTY OF)
) SS.:
STATE OF NEW YORK)

JUSTO J. CECILIA, after first being duly sworn, did depose and say:

My name is JUSTO J. CECILIA. I live at 763 Fox Street, Apartment 4-J, Bronx, New York. I am a bookkeeper. My business address is 508 Willis Avenue, Bronx, New York. I was born on February 14, 1933 in Isabela, Puerto Rico. I came to New York City from Puerto Rico in 1960.

I was a republican candidate for the New York State Senate in the General Election of November, 1964, in the then 27th Senatorial District (now the 35th. District). About 35 per cent of the voters in this district speak Spanish.

In 1964 my campaign literature consisted of 5,000 pamphlets, all of which were in Spanish. I also used 2500 campaign posters bearing my photograph. These were all in English. The posters and the pamphlets were distributed by myself and a few assistants. I also used a sound truck at between 40 and 60 unscheduled campaign meetings during the four or five weeks preceding the election. These meetings were held at various places throughout the district and were attended by between 20 and 100 persons. I was the only speaker. All the speeches I made using this sound truck were in Spanish.

[fol. 67] During the campaign one news-type article which included my photograph appeared in "El Diario", a Spanish language news paper.

To the best of my recollection Senator Ivan Warner, one of my opponents in the 1964 election, used Spanish campaign literature and ran advertisements in local Spanish newspapers. Another opponent, Mr. Sanabriana, used a sound truck from which he spoke in Spanish.

I am a member of the Hunts Point Republican Club at 901 Hunts Point Avenue, Bronx, New York. This club is not primarily composed of Spanish-speaking people.

/s/ Justo J. Cecilia
JUSTO J. CECILIA

Sworn to before me this 7th day of October, 1965

/s/ John J. Montes
JOHN J. MONTES
Notary Public, State of New York
No. 08-7995960
Qualified in Bronx County
Commission Expires March 30, 1966

[fol. 68] AFFIDAVIT

COUNTY OF)
)
STATE OF NEW YORK) SS.:

My name is JOSE RAMOS-LOPEZ. I live at 1421 Madison Avenue, New York, New York. I was born on November 2, 1914 at Caguas, Puerto Rico. I am an attorney and my office is at 384 East 149th Street, Bronx, New York. I am a Democrat and represent the 75th Assembly District in the New York State Assembly. I have been a member of the State Assembly since 1959.

In 1964 I represented what was then the 14th Assembly District and which now, with some changes, is the 75th District. I estimate that approximately fifty percent of the voters in the 75th District speak Spanish; a somewhat lower percentage of the voters in the old 14th District spoke Spanish. I have always used the Spanish language in my political campaigns. Whatever campaign literature I have printed is printed in both Spanish and English. In my 1964 primary campaign I distributed roughly 40,000 pieces of literature by mail and hand-delivery and in the 1965 primary about 50,000 pieces. In each case approximately fifty percent of the literature was in Spanish.

In 1964 I attended and conducted numerous campaign meetings which were held in Spanish as well as English. In my 1965 campaign meetings Spanish was used as fre-
[fol. 69] quently as English. As each campaign drew to a close, the meetings were conducted on a daily basis and drew approximately 250 to 300 people each. The meetings normally took place at the New Deal Democratic Club, 1492 Madison Avenue, New York, or at the Caribe Democratic Club, 115 West 116th Street, New York. The Caribe Democratic Club, of which I am an official, was established twelve years ago and is part of the New York County Democratic organization.

As a candidate and as an assemblyman I frequently prepare in Spanish press releases on my positions and activities. The Spanish press, in particular the daily pa-

per "El Diario-La Prenza" often uses this material as a basis for news reports on my campaign and legislative activity. "El Diario" also uses the English language press releases of non-Spanish speaking candidates and office-holders in the same manner after translating them into Spanish.

All of my opponents in my political campaigns used Spanish in their campaigns, as do city-wide and statewide candidates. Governor Rockefeller for one is especially fluent in Spanish and employs it frequently when campaigning in parts of New York where Spanish is spoken. Senator Robert Kennedy just a few days ago read part of a campaign speech in Spanish while appearing at a rally in my district. Other non-Spanish speaking city-wide candidates usually employ Spanish speak- [fol. 70] ing campaign aides to campaign in their behalf in Spanish-speaking neighborhoods.

As a member of the Assembly I am frequently interviewed regarding public questions on Spanish-language radio stations. In 1965 this has occurred approximately eight or ten times. Sometimes these are brief question-and-answer sessions recorded away from the studio. Other times they are more formal. I have spoken on stations WADO, WHOM, WWRL, and WLIB in Spanish. In past years, but not recently, I have made paid sport announcements in Spanish on Spanish-language radio stations.

/s/ Jose Ramos-Lopez
JOSE RAMOS-LOPEZ

Sworn to before me this 7th day of October, 1965

/s/ John J. Montes
JOHN J. MONTES
Notary Public, State of New York
No. 03-7995960
Qualified in Bronx County
Commission Expires March 30, 1966

[fol. 71] AFFIDAVIT

COUNTY OF NEW YORK)
) ss.:
STATE OF NEW YORK)

CARLOS MANUEL RIOS, after first being duly sworn, did depose and say:

My name is CARLOS MANUEL RIOS. I live at 314 East 105th Street, New York, New York. I was born on March 5, 1914 at Ponce, Puerto Rico. My office is at the East Harlem Reform Democratic Club at 1678 Lexington Avenue, New York City.

I am presently a member of the New York State Assembly representing the 10th Assembly District. This district will become part of the 76 District under the current reapportionment. It is my estimate that approximately 40 per cent of the voters in my district speak Spanish. I am now a Democratic candidate for Councilman at-large for New York County in the 1965 general election.

Over all, in the 1964 and in the present campaign, about 50 per cent of my campaigning was and is in Spanish, about half of my campaign speeches are in Spanish and the hand bills and other literature I have had distributed are all in both English and Spanish. In both my 1964 and 1965 campaigns I distributed approximately 25,000 handbills.

I have purchased newspaper advertisements in the Spanish language newspapers "Mundo Americano" and "El Diario-La Prensa". A copy of a full page advertisement I ran in Mundo Americano during my 1965 campaign is appended hereto as Attachment A. I have also purchased time on WHOM and WBNX, two Spanish language radio stations in New York City. The time pur-
[fol. 72] chased was for one minute campaign spot announcements. I know that at least two of my opponents

in the 1965 primary, Mrs. Eugene Flatow and Mr. Gilberto Gerena Valintin, used Spanish campaign literature.

/s/ Carlos Manuel Rios
CARLOS MANUEL RIOS

Sworn to before me this 7th day of October, 1965

/s/ Franklyn Gould
FRANKLYN GOULD
Notary Public
State of N.Y.
Co. of N.Y.
Comm. Ex. Mar. 6, 1966

[fol. 73] AFFIDAVIT

STATE OF TEXAS
COUNTY OF BEXAR

Jake Johnson, of San Antonio, in the County of Bexar, State of Texas, being duly sworn, deposes and says:

1. That he is a Member of the Texas House of Representatives from Bexar County.
2. That he is presently serving his third term of office, having campaigned seven times throughout the County of Bexar, in four party primaries and in three general elections.
3. That he has run at large in Bexar County and is familiar with the conduct of the political campaigns of other office holders and seekers in the County and State.
4. That he has lived in San Antonio for 14 years and he is a native born American of English speaking descent.
5. That approximately 50% of the persons living in Bexar County are Spanish speaking, many of whom are unable to read or speak the English language.
6. That the following techniques and practices are employed by political office seekers to communicate with non-English speaking voters:

a. Voting machines are exhibited and demonstrated on the Spanish speaking television stations where the

viewers are shown how to operate the machines. They are shown how to vote a straight one-party ticket or how to split a ticket. Such matters as how to close the voting booth curtain and recognize various political candidates' names are also demonstrated.

b. Spanish speaking radio and television are used to explain the issues and to see and hear the candidates.

[fol. 74] c. State-wide office seekers inform the Spanish speaking voters of their positions and qualifications through local office holders and interested persons who are articulate in the Spanish language.

d. Speeches made at public gatherings are often in Spanish when the audience is primarily Spanish speaking.

e. Leaflets are distributed with the names of the candidates and the party symbols, donkey or elephant, beside the names.

7. That the inability to read or speak English is not a barrier to intelligent voting for candidates or issues. Candidates who don't speak Spanish, solicit persons who speak Spanish to campaign for them in the Spanish speaking communities.

8. In the Texas House of Representatives there are 150 Members of whom approximately 40 have substantial Spanish speaking constituencies. They all campain in Spanish themselves or employ others to do so in their behalf.

/s/ Jake Johnson
Rep. Dist. 68, Texas House

Subscribed and sworn to before me, this 5th day of October, 1965.

My Commission expires June 1, 1967.

/s/ Robert L. Vale
ROBERT L. VALE
Notary Public in and
For Bexar County, Texas

[fol. 75] AFFIDAVIT

STATE OF TEXAS
COUNTY OF BEXAR

John C. Alaniz, of San Antonio, in the County of Bexar, State of Texas, being duly sworn, deposes and says:

1. That he is a Member of the Texas House of Representatives from Bexar County.

2. That he is presently serving his third term, having campaigned six times throughout the County of Bexar, in three party primaries and in three general elections.

3. That he has run at large in Bexar County and is familiar with the political campaigns of other political office holders and seekers in the County and State.

4. That he has lived in San Antonio for 30 years and he is a native born American of Mexican descent.

5. That 50-55% of the persons residing in Bexar County are Mexican Americans, many of whom are unable to speak, read, or understand the English language clearly.

6. That the following techniques and devices are employed by political office seekers to communicate with non-English speaking persons in an effort to inform them as to the issues and candidates:

a. Speeches are delivered in English and Spanish depending upon the linguistic character of the particular audience.

b. The use of radio and television is employed. There are four Spanish speaking radio stations and seven English speaking stations; one Spanish speaking television station and three English speaking television stations. Both English and Spanish speaking stations are used to reach all members of the voting public regardless of linguistic ability.

[fol. 76] c. Leaflets are printed and distributed by interested persons in both Spanish and English, explaining the issues to be voted upon and the candidates running for office.

d. State-wide office seekers utilize local political office seekers, and other interested persons to campaign in the Spanish speaking communities in an effort to get their (state-wide candidates) message across to the non-English speaking voters.

7. That election judges in precincts give oral instructions in Spanish to persons who are unable to read or speak English. This practice is authorized by V.A.T.S. Election Code, Art. 8.13a.

8. That many members of the Texas House of Representatives have a substantial number of Spanish speaking persons in their districts and to my knowledge they all campaign partly in Spanish.

/s/ John C. Alainz—Dist. 68-7

Subscribed and sworn to before me, this 5th day of October, 1965.

My Commission expires June 1, 1967.

/s/ Robert L. Vale
ROBERT L. VALE
Notary Public in and
For Bexar County, Texas

[fol. 77] AFFIDAVIT

CITY OF WASHINGTON)
) SS:
DISTRICT OF COLUMBIA)

Edwin E. Willis, being first duly sworn, says:

My name is Edwin E. Willis. I am a member of the United States House of Representatives and have represented the Third Congressional District of Louisiana since

January of 1949. Before that I served a year as a member of the Louisiana State Senate.

I have no personal interest in the litigation concerning the constitutionality of Section 4(e) of the Voting Rights Act of 1965 inasmuch as that section has no application to my District or State.

I was born in Arnaudville, Louisiana, on October 2, 1903, and lived there until 1920, when I moved to St. Martinville, Louisiana. I moved to New Orleans in 1922 and returned to St. Martinville in 1936, where I have lived ever since.

I have been involved in Louisiana party politics in my area, in one way or another, for over thirty years. The congressional district that I represent has a population of some 400,000. Most of these people are of French background and well over 50 per cent of those of French background speak or understand the French language. Of those who speak or understand French there is a minority, quite small but important to me as a candidate and as an individual, that cannot understand or speak English.

[fol. 78] Every election year I have campaigned in my district, not only for myself, but frequently for other candidates for national, state, and local office. I have always done some of my campaigning in French. I believe that a candidate for office in my area who does not use French would be handicapped in his effort to reach all of the voters.

I keep as close contact as I can with the voters in my district. I visit with them frequently and talk to them, both individually and in groups. It is not uncommon for them to ask me questions and discuss their problems with me in French. Many times I know that the voter I am talking to cannot read and write in English, and is even unable to understand spoken English. We often discuss political issues and candidates in this manner. From my years of experience in campaigning among French-speaking people, I have formed a definite opinion that French-speaking voters who are illiterate in English generally have as clear a grasp of the issues and an understanding of the candidates, as do people who read and write the English language.

Louisiana law permits a prospective voter to establish his literacy in his mother tongue if his mother tongue is other than English. There have been no problems arising from the administration of this law that I am aware of. In my judgment the limitation of the electorate solely to persons who are literate in the English language would [fol. 79] not result in a better informed or more intelligent electorate.

/s/ E. E. Willis

Subscribed and sworn to before me this 12th day of October, 1965.

/s/ H. Eldred Wilson
Notary Public
H. ELDRED WILSON
Notary Public, District of Columbia
Commission Expires Sept. 15, 1969

[fol. 80] AFFIDAVIT

STATE OF NEW MEXICO)
: ss.
COUNTY OF SANTA FE)

I, BOSTON E. WITT, after first having been duly sworn, state: that my name is Boston E. Witt, that I am the duly elected and qualified Attorney General for the State of New Mexico, and that I have served in that capacity since January 1, 1965. I was elected to that office on November 3, 1964. Prior to that time I served as Deputy Attorney General and as Assistant Attorney General since 1959.

I am a native New Mexican and a life-long resident, having been born and raised in New Mexico.

I have been involved in New Mexico party politics in one way or another for the last ten years. The State of

New Mexico has a population of approximately 1,031,900 people. I would judge that better than 27 percent of these people are Spanish-speaking and a substantial number of them are illiterate in English.

Every election year I have campaigned in New Mexico, not only for myself but for other candidates for national, state and local offices, I have always done some of my campaigning in Spanish and Tewa Indian because of our three cultures in New Mexico. I believe that a candidate for office in New Mexico has to use at least English and Spanish in order to effectively reach all of the voters. While campaigning, I have traveled throughout the State of New Mexico making speeches and talking to citizens of the State in connection with my campaign. I have also advertised my campaign by appearing on television and radio and speaking the Spanish language. Many of my radio tapes were cut in English, Spanish and Tewa Indian. Many of my billboards were in Spanish.

[fol. 81] I visit with the electorate frequently and talk to them individually, in small groups and in large groups. It is common for them to ask me questions and to discuss their problems with me in Spanish. Many times I know that the voter I am talking to cannot read and write in English and is not able to understand spoken English. We often discuss political issues and candidates in Spanish. From my years of experience in campaigning and being involved in New Mexico politics among Spanish-speaking people, I have formed a definite opinion that Spanish-speaking voters who are illiterate in English generally have as clear a grasp of the issues and an understanding of the candidates as do people who read and write the English language.

New Mexico law permits a prospective voter to register and to vote in the Spanish language. In addition, New Mexico law requires the instructions on voting machines and ballots, and certain election notices, to be written and published in both Spanish and English. These laws have, in my opinion, worked well. There have been few, if any, problems arising from their administration of which I am aware. In my judgment, the limitation of the electorate solely to persons who are literate in the English language would not result in a better informed or more in-

telligent electorate, nor would it be in the best interest of New Mexico.

Effective compaigning in New Mexico at the precinct level requires that some speeches be made in Spanish. Advertising at this level in Spanish is important also, particularly in those areas of New Mexico where the Spanish-speaking people predominate.

Signed this 11th day of October, 1965.

/s/ Boston E. Witt
BOSTON E. WITT
Attorney General
State of New Mexico

Subscribed and sworn to before me this 11th day of October, 1965.

/s/ Emilie Barrone Ortiz
Notary Public

My Commission expires:
4-4-69

[fol. 82]

PUERTO RICANS IN THE UNITED STATES [1]

STATE	NO.	STATE	NO.
Alabama *	663	Mississippi	301
Alaska *	562	Missouri	940
Arizona *	1008	Montana	53
Arkansas	207	Nebraska	333
California *	28,108	Nevada	179
Colorado	844	New Hampshire	212
Connecticut *	15,247	New Jersey	55,351
Delaware *	773	New Mexico	433
District of Columbia	1373	New York *	642,622
Florida	19,535	North Carolina	1866
Georgia *	2334	North Dakota	68
Hawaii *	4289	Ohio	13,940
Idaho	60	Oklahoma	1398
Illinois	36,081	Oregon *	233
Indiana	7218	Pennsylvania	21,206
Iowa	226	Rhode Island	447
Kansas	1136	South Carolina	1114
Kentucky	1376	South Dakota	124
Louisiana	1935	Tennessee	499
Maine *	403	Texas	6050
Maryland	3229	Utah	473
Massachusetts *	5217	Vermont	108
Michigan	3806	Virginia	2971
Minnesota	387	Washington *	1738

[fol. 83]

STATE	NO.
West Virginia	252
Wisconsin	3574
Wyoming	50

[1] United States Census of Population, 1960. Subject Reports, *Puerto Ricans in the United States*, p. 103.

* English language literacy requirement.

[fol. 84]

Puerto Rican Migration to Continental U.S.[1]

ANNUAL AVERAGES

1909-1930	1,986
1931-1940	904
1941-1950	18,794
1951-1960	41,212
1961-1962	4,523

EACH YEAR, 1950-1960

1950	34,703
1951	52,899
1952	59,103
1953	69,124
1954	21,531
1955	45,464
1956	52,315
1957	37,704
1958	27,690
1959	29,989
1960	16,298

[1]Migration Division Puerto Rico Department of Labor, *A Summary in Facts and Figures, Puerto Rican Migration to New York City* (New York, 1964) p. 10

[fol. 85]

EDUCATION STATISTICS FOR PUERTO RICO

School Enrollment [1]

Population 5 to 34 years old	Students Enrolled in Schools 5 to 34 years old	% of Students Enrolled in Schools—5 to 34 years old
1,330,660	606,436	46%

SCHOOLS 1961-62 [2]

Public	Private
Elementary—1694	*Elementary*—126 (112—Church Related)
High Schools—443	*High Schools*—87

[1] United States Census of Population 1960, *Puerto Rico; General Social and Economic Characteristics*, Table 39 p. 53-119

[2] *STATISTICS OF STATE SCHOOLS SYSTEMS, 1963-64* OFFICE OF EDUCATION, DATA FROM DEPARTMENT OF EDUCATION OF PUERTO RICO TO THE UNITED STATES OFFICE OF EDUCATION.

[fol. 86]

Years of School Completed

Population 14 Years Old or More [1]	Number Completing 8th Grade 14 Years Old or More [1]	% Completing 8th Grade 14 Years Old or More
1,406,444	485,004	34%

[1] U. S. Census of Pop. 1960 *Puerto Rico: Detailed Characteristics* Table 80.

[fol. 87]

Population and Education Statistics for Puerto Ricans in States with Population of 25,000 or More [1]

State	Puerto Ricans in State	Puerto Ricans by Birth	Birth & Parentage Puerto Ricans 1960 20 yrs. and older	% Puerto Ricans who are 14 yrs. & older with 7th gr. education
California	28,108	15,479	16,278	70%
Illinois	36,081	25,843	17,623	56%
New Jersey	55,351	39,779	28,295	56%
New York	642,622	448,585	344,836	60%

[1] UNITED STATES CENSUS OF POPULATION, 1960. *PUERTO RICANS IN THE UNITED STATES* Table 6.

[fol. 88]

LITERACY IN PUERTO RICO, 1960 [1]

Ability to Read and Write Any Language

Total Population	Able to read and write		Unable to read and write		Not reported
	Number	Percent	Number	Percent	
1,670,084	1,386,968	83.0	276,876	16.6	6,240

Ability to Speak English

Able to speak English		Unable to speak English		Not reported
Number	Percent	Number	Percent	
629,280	37.7	1,024,824	61.4	15,980

[1] United States Census of Population 1960, *Puerto Rico*, p. 53-121.

[fol. 89] AMERICAN FLAG SCHOOLS

Guam

Citizenship: 8 U.S.C.A. § 1407
Population 1960: 67,044[1]
Education:

a. Those 14 and over who have completed 7th grade—17,228[2]

b. Enrolled in school—17,840[3]

c. Language of instructions—English 3 Territory of Guam Code § 11200 (1960)[4]

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[1] United States Census of Population 1960, *Guam, General Population Characteristics.* Table 4, p. 54-8.

[2] United States Census of Population 1960, *Guam, General Population Characteristics.* Table 11, p. 54-12.

[3] United States Census of Population 1960, *Guam, General Population Characteristics.* Table 7, p. 54-10.

[4] This regulation was enacted in the first code in 1952. There is a second language but such is only spoken so one could not be literate in it.

[fol. 90] *Canal Zone*

Citizenship (Parent a citizen): 8 U.S.C.A. § 1403
Population 1960: 42,122 [1]
Education:

a. Those 14 and over who have completed 7th grade—15,245 [2]

b. Enrollment 1962-63 [3]

1. English language schools—10,300

2. Spanish language (Latin schools)—3,664 [4]

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[1] United States Census of population 1960, *Canal Zone, General Population Characteristics*. Table 5, p. 57-9.

[2] United States Census of Population 1960, *Canal Zone, General Population Characteristics*. Table 12, p. 57-16.

[3] 1964 Annual Report of the Panama Canal Company and the Canal Zone Government, p. 119.

[4] All of those in Spanish language (Latin schools) are aliens. 1964 Annual Report of the Panama Canal Company and the Canal Zone Government.

[fol. 91] *Virgin Islands*

Citizenship: 8 U.S.C.A. § 1406
Population 1960: 32,099[1]
Education:

a. Those 14 and over who have completed 7th grade—6,039[2]

b. Enrolled in school—8,892[3]

c. Language of Instruction—English

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[1] United States Census of Population 1960, *Virgin Islands of the United States, General Population Characteristics.* Table 5, p. 55-19.

[2] United States Census of Population 1960, *Virgin Islands of the United States, General Population Characteristics.* Table 13, p. 55-19.

[3] United States Census of Population 1960, *Virgin Islands of the United States, General Population Characteristics.* Table 8, p. 55-15

[fol. 92]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 1915-65

[File Endorsement Omitted]

JOHN P. MORGAN and CHRISTINE MORGAN, PLAINTIFFS

v.

NICHOLAS DEB. KATZENBACH, as Attorney General of the United States, and NEW YORK CITY BOARD OF ELECTIONS, consisting of James M. Power, Thomas Mallee, Maurice J. O'Rourke, and John R. Crews, DEFENDANTS

Alfred Avins, of Washington, D. C. for the plaintiffs.

St. John Barrett and David Rubin of the Department of Justice, for the defendant Katzenbach, and for Intervener United States of America.

Leo A. Larkin, Corporation Counsel of the City of New York, and Morris Einhorn, Assistant Corporation Counsel, both of New York, N. Y., for the defendants James M. Power et al.

Louis F. Lefkowitz, Attorney General of the State of New York, Ruth Kessler Tock, Assistant Solicitor General, and Jean M. Coon, Assistant Attorney General, all of Albany, N. Y., filed a brief as *amici curiae* in support of plaintiffs' position.

[fol. 93] Before McGOWAN, Circuit Judge, HOLTZOFF, District Judge, and McGARRAGHY, District Judge.

OPINION—NOVEMBER 15, 1965

HOLTZOFF, District Judge. The question presented in this case is whether the Congress has constitutional power to regulate by statute the qualifications of voters and to supersede the requirements prescribed by the States. Specifically the issue is the constitutionality of Section

4(e) of the Voting Rights Act of 1965, which in effect provides that no person who has been educated in an American school in which the predominant language is other than English, shall be disqualified from voting under any literacy test. As a corollary, the ultimate problem is whether this provision of the Act of Congress supersedes the literacy test for voters prescribed by the constitution and statutes of the State of New York, which impose the ability to read and write English as a requirement for voting.

[fol. 94] The action is brought by voters in the City of New York, who claim that the weight of their votes is being adversely affected by the fact that numerous citizens living in New York City, who have migrated from Puerto Rico and who read and write only in the Spanish language, are being permitted by the local authorities to vote in disregard of the State literacy test and in compliance with the Act of Congress, which the plaintiffs claim is unconstitutional when it conflicts with State law. The defendants are the Attorney General of the United States and the members of the Board of Elections of the City of New York. The plaintiffs seek a declaratory judgment and an injunction restraining compliance with the Act of Congress. In view of the fact that this action is brought to enjoin the enforcement of an Act of Congress on the ground of its repugnance to the Constitution of the United States, a statutory three-judge court was convened, 28 U.S.C. §§ 2282 and 2284. The United States has been permitted to intervene in support of the validity of the Act of Congress, 28 U.S.C. § 2403, and Rule 24(a) of the Federal Rules of Civil Procedure. The Attorney General of the State of New York has filed a brief as *amicum curiae* in support of the plaintiffs' contention.

The plaintiffs clearly have a standing to sue. A voter who claims that the weight of his vote is being diluted or impaired by the ballots of others who are not legally entitled to vote, has a right to challenge their right of suffrage and to bring appropriate proceedings to prevent [fol. 95] their votes from being cast or counted.[1]

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[1] *Gray* v. *Sanders*, 372 U. S. 368, 374-5.

The Voting Rights Act of 1965 (Act of August 6, 1965, Public Law 89-110, U. S. Code Congressional and Administrative News, pp. 2326 *et seq.*) Section 14(b), provides as follows:

> (b) No court other than the District Court for the District of Columbia or a court of appeals in any proceeding under section 9 shall have jurisdiction to issue any declaratory judgment pursuant to section 4 or section 5 or any restraining order or temporary or permanent injunction against the execution or enforcement of any provision of this Act or any action of any Federal officer or employee pursuant hereto.

This provision confers on this Court exclusive jurisdiction of this action. In fact the Attorney General of the United States concedes that this Court has jurisdiction, although the Corporation Counsel of the City of New York contests it. We conclude that jurisdiction exists.[2] The matter is before the Court on cross-motions for summary judgment.

The Constitution of the State of New York, Article II, Section 1, which defines the qualifications of voters, provides, in part, as follows:

> Notwithstanding the foregoing provision, after January first, one thousant nine hundred twenty-two, no person shall become entitled to vote by attaining majority, by naturalization or otherwise, unless such [fol. 96] person is also able, except for physical disability, to read and write English.

This requirement is reiterated in Section 150 of the Election Laws of the State of New York,[3] the pertinent provision of which reads as follows:

> In the case of a person who became entitled to vote in this state by attaining majority, by naturalization

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[2] Cf. *McCann* v. *Paris* (W.D.-Va. 1965) 244 F. Supp. 870, dismissing for lack of jurisdiction an action challeng- the validity of another provision of the Voting Rights Act, and holding that this court alone has jurisdiction of the subject matter.

[3] McKinney's Consolidated Laws of New York, Book 17, p. 327.

or otherwise after January first, nineteen hundred twenty-two, such person must, in addition to the foregoing provisions, be able, except for physical disability, to read and write English.

It appears from the papers annexed to the motions before the Court and it is undisputed that beginning in about 1940 there was a large migration to New York City of citizens of the United States from Puerto Rico, and that there are several hundred thousand such persons now living in New York. About half of them are unable to read or speak English, but many of them are able to read and write Spanish, because the public schools of Puerto Rico are conducted largely in that language. Thus there is a large group of American citizens residing in New York who are disqualified from voting because of the New York literacy test. It is reasonable to assume that undoubtedly there are other citizens who are also unable to meet the literacy test and are likewise disqualified from voting.

The Voting Rights Act of 1965, which was enacted by Congress and became law on August 6, 1965, as heretofore stated, contains the following provision in Section 4(e):

[fol. 97] (e)(1) Congress hereby declares that to secure the rights under the fourteenth amendment of persons educated in American-flag schools in which the predominant classroom language was other than English, it is necessary to prohibit the States from conditioning the right to vote of such persons on ability to read, write, understand, or interpret any matter in the English language.

(2) No person who demonstrates that he has successfully completed the sixth primary grade in a public school in, or a private school accredited by, any State or territory, the District of Columbia, or the Commonwealth of Puerto Rico in which the predominant classroom language was other than English, shall be denied the right to vote in any Federal, State, or local election because of his inability to read, write, understand, or interpret any matter in the

English language, except that in States in which State law provides that a different level of education is presumptive of literacy, he shall demonstrate that he has successfully completed an equivalent level of education in a public school in, or a private school accredited by, and State or territory, the District of Columbia, or the Commonwealth of Puerto Rico in which the predominant classroom language was other than English.

If the foregoing Congressional provision is valid, it *pro tanto* nullifies the constitutional and statutory provisions of New York state, which impose an English literacy test on voters. It would require New York not to apply the literacy requirement exacted by its constitution and laws to voters who have been educated in a public school, or accredited private school, in any State, territory, District of Columbia, or the Commonwealth of Puerto Rico, in which the predominant language was other than English. The constitutional and statutory enactments of the State of New York would be abrogated and nullified to that extent.

It is urged by the plaintiffs that the Congressional enactment is invalid and unconstitutional. The Voting [fol. 98] Rights Act of 1965 is primarily intended to prevent discriminatory administration of the right to register and vote. Potent machinery is credited by the statute to achieve this end. Section 4(e) is, however, completely and entirely disassociated from the rest of the Act and constitutes no part of the scheme of the legislation. The measure originated in the Senate. Section 4(e) was not in the bill as reported by the Senate Committee on the Judiciary. It was inserted by an amendment from the floor. After the bill passed the Senate, the House of Representatives struck out the entire bill except the enacting clause and substituted a different measure, which again did not include any such provision. Section 4(e) was, however, reinserted by the Conference Committee and remained in the measure as finally passed. It is quite apparent that the Section did not receive consideration by any legislative Committee in either House. While Section 4(e) was directed at the Puerto Rican situation in New

York, which has already been briefly described, actually it is much broader in its phraseology and scope and conceivably may be applicable to many other citizens who are illiterate in English, and is effective throughout the United States.

Traditionally and historically the qualifications of voters has been invariably a matter regulated by the States. This subject is one over which the Congress has no power to legislate. Thus Article I, Section 2, of the Constitution of the United States, provides as follows:

> The House of Representatives shall be composed of Members chosen every second Year by the People [fol. 99] of the several States, and the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature.

Article I, Section 4, provides as follows:

> The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of chusing Senators.

It will be observed that this Section does not include the power to prescribe requisites for the right of suffrage. Power to make or alter regulations concerning "the times, places and manner of holding elections" does not comprise authority to regulate qualifications for voters. No express or implied power is conferred by the Constitution on Congress to legislate concerning requirements for voters in the several States. The matter is within the purview of the Tenth Amendment, which reads as follows:

> The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the states respectively, or to the people.

The right of suffrage is not a privilege and immunity of a citizen of the United States as such, but is a right con-

ferred by the States. In *Minor* v. *Happersett*, 21 Wall. 162, 177, Mr. Chief Justice Waite, in speaking for a unanimous bench, stated:

> For nearly ninety years the people have acted upon the idea that the Constitution, when it conferred citizenship, did not necessarily confer the right of suffrage. If uniform practice long continued can settle the construction of so important an instrument as the Constitution of the United States con-
> [fol. 100] fessedly is, most certainly it has been done here. Our province is to decide what the law is, not to declare what it should be.

In that case it was held that the States had the power of excluding women from the right to vote. It required a Constitutional amendment to grant suffrage to women.

In *Pope* v. *Williams*, 193 U. S. 621, 632, the same theory was again enunciated:

> The privilege to vote in any State is not given by the Federal Constitution, or by any of its amendments. It is not a privilege springing from citizenship of the United States. *Minor* v. *Happersett*, 21 Wall. 162. It may not be refused on account of race, color or previous condition of servitude, but it does not follow mere citizenship of the United States. In other words, *the privilege to vote in a State is within the jurisdiction of the State itself, to be exercised as the State may direct, and upon such terms as it may seem proper, provided, of course, no discrimination is made between individuals in violation of the Federal Constitution.* (Emphasis supplied.)

The doctrine that the right to vote is not a privilege derived from the United States, but is conferred by the State, was reiterated in *Breedlove* v. *Suttles*, 302 U. S. 277, 283, in the following manner:

> Privilege of voting is not derived from the United States, but is conferred by the State and, save as restrained by the Fifteenth and Nineteenth Amendments and other provisions of the Federal Constitution, *the State may condition suffrage as it deems appropriate.* (Emphasis supplied.)

In that case the Supreme Court unanimously held that the States had power to impose a poll tax as a prerequisite for voting. It required a Constitutional Amendment to [fol. 101] eliminate the exaction of poll taxes as a condition precedent to voting in Federal elections.

Only within the past year the Supreme Court again restated the same propositions in *Carrington* v. *Rash*, 380 U. S. 89, 91, as follows:

> Texas has unquestioned power to impose reasonable residence restrictions on the availability of the ballot. *Pope* v. *Williams*, 193 U. S. 621. There can be no doubt either of the historic function of the States to establish, on a nondiscriminatory basis, and in accordance with the Constitution, other qualifications for the exercise of the franchise. Indeed, "[t]he States have long been held to have broad powers to determine the conditions under which the right of suffrage may be exercised." *Lassiter* v. *Northhampton Election Bd.* 360 U.S. 45, 50. Compare *United States* v. *Classic*, 313 U. S. 299; *Ex parte Yarbrough*, 110 U. S. 651. "In other words, the privilege to vote in a State is within the jurisdiction of the State itself, to be exercised as the State may direct, and upon such terms as to it may seem proper, provided, of course, no discrimination is made between individuals in violation of the Federal Constitution." *Pope* v. *Williams*, *supra*, at 632.

This case will be hereafter discussed in another connection.

The case of *Lassiter* v. *Northampton Election Bd.*, 360 U. S. 45, decided in 1959, is practically on all fours with the case at bar. The State of North Carolina prescribed a literacy test for voters in the English language. A voter brought suit in the Federal court for a declaration that the requirement was unconstitutional. The Supreme Court unanimously upheld the validity of the test and the power of the State to impose it. In its opinion, which was written by Mr. Justice Douglas, the Court discussed the authority of the States *vis-a-vis* the power of the Congress in this field, in the following illumi- [fol. 102] nating manner, p. 50:

The States have long been held to have broad powers to determine the conditions under which the right of suffrage may be exercised, *Pope* v. *Williams*, 193 U. S. 621, 633; *Mason* v. *Missouri*, 179 U. S. 328, 335, absent of course the discrimination which the Constitution condemns. Article 1, § 2 of the Constitution in its provision for the election of Members of the House of Representatives and the Seventeenth Amendment in its provision for the election of Senators provide that officials will be chosen "by the People". Each provision goes on to state that "the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature". So while the right of suffrage is established and guaranteed by the Constitution (*Ex parte Yarbrough*, 110 U. S. 651, 663-665; *Smith* v *Allwright*, 321 U. S. 649, 661-662) it is subject to the imposition of state standards which are not discriminatory and which do not contravene any restriction that Congress, acting pursuant to its constitutional powers, has imposed. See *United States* v. *Classic*, 313 U. S. 299, 315. While §2 of the Fourteenth Amendment, which provides for apportionment of Representatives among the States according to their respective numbers counting the whole number of persons in each State (except Indians not taxed), speaks of "the right to vote", the right protected "refers to the right to vote as established by the laws and constitution of the State". *McPherson* v. *Blacker*, 146 U. S. 1, 39.

There are indeed constitutional limitations on the power of the States to prescribe qualifications for voters. Each of these restrictions, however, has been imposed by an Amendment to the Constitution of the United States. Thus, the Fifteenth Amendment, which became effective in 1870, bars the States from denying or abridging the right of citizens of the United States to vote on account of race, color, or previous condition of servitude:—

[fol. 103] Section 1. The right of citizens of the United States to vote shall not be denied or abridged by the

> United States or by any State on account of race, color, or previous condition of servitude.

By the Nineteenth Amendment, which took effect in 1920, the States are precluded from denying the right of suffrage to women. That Amendment reads as follows:

> The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of sex.

The latest Constitutional Amendment in this field is the Twenty-fourth Amendment, which prevents the States from imposing a poll tax as a condition for voting in Presidential and Congressional elections. That Amendment reads as follows:

> The right of citizens of the United States to vote in any primary or other election for President or Vice President, for electors for President or Vice President, or for Senator or Representative in Congress, shall not be denied or abridged by the United States or any State by reason of failure to pay any poll tax or other tax.

Thus whenever Congress took steps to prohibit the States from imposing a particular requirement or qualification for voting, no matter of what kind, it invariably did so by initiating and proposing a Constitutional Amendment, which later was ratified by the States. So far as is known, until the passage of the Voting Rights Act of 1965, Congress never attempted to achieve this result by legislation. It is quite evidence, therefore, that it was the continuous and invariable view of the Congress that it may not intrude into this field and does not have power to regulate the subject matter by legislative [fol. 104] enactment. If Congress had the authority to take such action by legislation, the use of the laborious process of amending the Constitution would have been an exercise in futility or at least unnecessary surplusage.

In *Minor* v. *Happersett*, 21 Wall. 162, 175, to which reference has already been made, Mr. Chief Justice Waite adverted and commented on this point as follows:

> And still again, after the adoption of the fourteenth amendment, it was deemed necessary to adopt a fifteenth, as follows: "The right of citizens of the United States to vote shall not be denied or abridged by the United States, or by any State, on account of race, color, or previous condition of servitude." The fourteenth amendment had already provided that no State shall make or enforce any law which should abridge the privileges or immunities of citizens of the United States. If suffrage was one of these privileges or immunities, why amend the Constitution to prevent its being denied on account of race, &c.? Nothing is more evident than that the greater must include the less, and if all were already protected why go through with the form of amending the Constitution to protect a part?

There is indeed an inherent limitation on the States implicit in the Equal Protection of the Laws clause of the Fourteenth Amendment. The States are barred from making an unreasonable classification between various groups of citizens in determining who should have the right to vote. Thus, in *Carrington* v. *Rash*, 380 U. S. 89, *supra*, it was held that while a State may impose reasonable residence requirements for voting, it may not deny the ballot to a *bona fide* resident merely because he is a [fol. 105] member of the armed forces of the United States. In other words, the State is precluded from distinguishing between residents who are civilians and residents who are members of the armed services, on the ground that such a distinction is an unreasonable classification and discrimination in violation of the Equal Protection of the Laws clause.

This rule is inapplicable in the instant case, because in *Lassiter* v. *Northampton Election Bd.*, 360 U. S. 45, from which we have already extensively quoted, it was held that a distinction between citizens who can read and write English and those who cannot, is not an unreasonable classification and does not violate the Equal Protection of the Laws clause. Moreover, what is involved in the case at bar is not the constitutionality of the New York State literacy test. Its validity is not assailed. What

is presented here is the constitutionality of the Congressional enactment which would, in part, abrogate the laws of the State.[4]

A veiled intimation that the New York literacy test was intended to exclude Spanish-speaking citizens from the franchise is both irrelevant in law and untenable in fact. The requirement was originally adopted in 1921—long before the large influx of Puerto Ricans into New York.

At the oral hearing in this case, the argument was advanced that the statutory provision here in question may be sustained as an exercise of the power of Congress to [fol. 106] legislate for the territories under Article IV, Section 3, Paragraph 2, of the Constitution, which authorizes the Congress to "dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States." It is contended that since Section 4(e) relates to citizens of the United States who had been residents of Puerto Rico, therefore the power of Congress to legislate for the Goevrnment of Puerto Rico embraces the authority to enact this provision. There are two answers to this contention. First, Section 4(e) is broad and comprehensive in its terms and is neither limited nor directed solely to Puerto Ricans and, therefore cannot be deemed an exercise of the power to legislate for Puerto Rico. Second, and more important, the power of Congress to legislate for a territory does not embrace authority to confer additional rights on citizens of the territory when they migrate to other parts of the United States. The Congress may not endow them with rights not possessed by other citizens of the State to which they have moved. No persuasive authority is cited in support of the contention of Government counsel on this point.

We have given due consideration to the presumption of validity which attaches to every Act of Congress. That presumption, however, is completely overcome and de-

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[4] The New York courts have sustained the validity of the literacy test. *Camacho* v. *Doe*, 7 N.Y.2d 763, 194 N.Y. Supp. 2d 33, affirming 21 N.Y. Supp. 2d 262.

stroyed by the inescapable conclusion that we have reached from the foregoing discussion to the effect that Section 4(e) of the Voting Rights Act of 1965, transgresses the powers granted to Congress and, therefore, is repugnant to the Constitution and invalid.

[fol. 107] Much of the oral argument and of the written material submitted in behalf of the Government, is intended to demonstrate what is claimed to be the unfairness of excluding from the right to vote in New York, those Puerto Ricans who can read and write Spanish, but are not literate in English. No matter how weighty and cogent such an argument may be, and we express no opinion on this subject, it should be addressed to the Legislature of New York tSate, rather than to the courts. It is hardly necessary to say that expediency, desirability, and policy of legislation are not the concern of the judiciary. We pass alone on the power to enact the legislation. If any remedy is necessary or desirable, an amendment to the Constitution of the State of New York, possibly implemented by legislation, would seem to be the appropriate recourse and not Congressional legislation.

We conclude that Section 4(e) of the Voting Rights Act of 1965 is unconstitutional. Accordingly, the plaintiffs' motion for summary judgment is granted, and the defendants' cross-motions for summary judgment are denied. Counsel may submit an appropriate order.

McGarraghy, District Judge, concurs.

/s/ A'exander Holtzoff
United States District Judge.

/s/ Joseph C. McGarraghy
United States District Judge.

November 15, 1965.

[fol. 108]

MORGAN v. KATZENBACH
Civil Action No. 1915-65

McGOWAN, *Circuit Judge, dissenting*: With all respect, I do not join in the disposition made by my colleagues of this challenge to Section 4(e) of the Voting Rights Act of 1965. Theirs is a persuasive statement of the difficulties which attend upon Congressional assertion of a power which has not been expressly granted to the federal legislature in the Constitution, and which may, therefore, be thought to have been reserved to the states by the Tenth Amendment. The prescription of voter qualifications is arguably such a power. But those difficulties do not obtain where a foundation for the Congressional action can be found in a power which has explicitly been reposed in the legislative branch of the federal establishment and the emanations of which speak to the states in the compelling accents of the Supremacy Clause.

I think, unlike my brethren, that a foundation of this kind is discernible for Section 4(e) as against the precise and limited attack made upon it in this record. That foundation resides, as a minimum, in the grant by the Framers to Congress of power to "make all needful Rules and Regulations" in respect of the territories.[1] The ma-

[1] *U. S. Const.* art. IV, § 3. Puerto Rico came under American rule by virtue of the Treaty of Paris of 1899, ending the Spanish-American War. That treaty provided, among other things, that "the civil rights and political status of the native inhabitants of [Puerto Rico] shall be determined by Congress." 30 Stat. 1754, at 1759. Section 4(e) could, thus, perhaps be regarded as legislation in furtherance of a valid treaty, finding its ultimate authority in the Treaty Power. Art. II, § 2. The New York City Board of Elections has pressed upon us quite strongly another international engagement of the United States in the form of the United Nations Charter. 59 Stat. 1045. Article 55 of the Charter commits the organization to the promotion of "universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion"; and the individual signatories are bound to seek to achieve these purposes. I do not think it necessary to base Section 4(e) upon these treaties. They are suggestive of the climate in which Congress presumably approaches its responsibilities under its Art. IV, § 3, powers.

[fol. 109] jority say that Section 4(e) cannot be appraised by reference to this grant because it is in terms "neither limited or directed solely to Puerto Ricans." But the complaint which plaintiffs make about Section 4(e) is confined to allegedly illegal voting by Puerto Ricans; and it seems to me that we are not only authorized, but indeed required under sound principles of constitutional adjudication, to restrict our consideration of the validity of this statute to the particular application of it which, so the plaintiffs themselves tell us, brings them into court.

Thus it is that I do not purport to decide anything about Section 4(e) except in respect of our Puerto Rican citizens resident in New York. As to them, however, I think that Congress has an independent base of legislative power which, wholly apart from the Fourteenth and Fifteenth Amendments, enables Congress to regulate rights of suffrage even in the face of adverse state action. This proposition can perhaps best be both explained and tested by a hypothetical case. Let us suppose that, in these troubled times of 1965, it was determined to be in our national interest for a non-English-speaking country to come into our possession in the status of a territory. Wholly aside from such treaty obligations as we might assume in connection with that accession, it seems evident that we might wish to deal with its inhabitants in a way which would commend itself to our own sense of justice and the fitness of things, as well as to the eyes of a world which has become increasingly sensitive about such matters. Congress, with these considerations in mind, adopts a statute which (1) confers extensive rights of self-government upon the territory, including arrangements which admit of the perpetuation of its cultural heritage through the continued use of the native language in the conduct of the public schools, (2) endows the inhabitants [fol. 110] with full American citizenship, including the free right to enter the United States and to take up residence here, and (3) provides that any such person exercising this last-mentioned right shall be privileged to vote in all elections in the state of his residence if his educational attainments are the equivalent of those required of his fellow-citizens, except that they issue in literacy in his native language rather than in English.

I should suppose that there would be little doubt of the power of Congress to enact such a law as a part of its constitutional authority and responsibility for the governance of the territories. And, being an appropriate exercise of an express grant of federal legislative power, it would, under the Supremacy Clause, prevail over any state enactment in conflict with it. I take the Congressional power to make rules and regulations for the territories to comprehend laws relating to the status and rights of the people who inhabit those territories and prescribing that such status and rights are to be recognized throughout the United States as well as in the territory itself. This must be so, if the central purposes of such federal legislation as is hypothesized above are to be realized. To the extent that, as the majority suggest, this may perhaps operate to place citizens of differing national origins in differing positions *vis-a-vis* the right to vote, the answer is that citizens within the reach of the constitutional grant of power over the territories are inescapably and legitimately separated by that fact from citizens to whom it has never extended. And it is appropriate to reiterate that we are not called upon by this record to define the scope of Congressional power with respect to any of our citizens other than Puerto Ricans.

[fol. 111] If, then, it be assumed that Congress could validly enact today a bill of the kind supposed, how closely could it be analogized in substance to what Congress has done over the years in the case of Puerto Rico? The parallel is, in my view, plain.

The controversies rampant at the time about the acquisition of Puerto Rico need not be raked over again. What did emerge from them on the part of most Americans was a unanimity of belief that, once acquired, Puerto Rico should be governed with due regard for the sensitivities of its people as well as world opinion. It was our national purpose to demonstrate, not least to our uneasy selves, that we had not been motivated by the narrow purposes of colonial conquest. There was a swelling impulse to set Puerto Rico on a path leading to a viable independence as speedily as that could be achieved, and an independence which, when it came, would carry with it a

true option to preserve and extend a cultural tradition as venerable as our own. It was as if the goals we envisaged for Puerto Rico were as much tests of ourselves, undertaken in the searching glare of colonialist scepticism, as of the Puerto Ricans.

The response of Congress to these sentiments was immediate and sustained, establishing a tradition of enlightened treatment of Puerto Rico which is currently one of the firmest props of our pretensions to a respectful hearing in the councils of the world. Section 4(e) of the Voting Rights Act of 1965 is but the latest legislative act in this tradition. It was preceded by a series of Congressional efforts to advance Puerto Rico to a self-governing independence. The first was the Foraker Act in 1900, 31 Stat. 77, which left only the lower house of the territorial legislature and the Resident Commissioner to [fol. 112] the United States to popular election by the Puerto Ricans. In the Jones Act of 1917, 39 Stat. 951, Congress brought the upper house under the same selection process, and gave the Governor of Puerto Rico, then subject to appointment by the President of the United States, the right to appoint four of the six Cabinet members. In 1947, the Jones Act was further liberalized, 61 Stat. 770, by empowering the people of Puerto Rico to elect their own Governor, with the latter privileged to select all of his own Cabinet members.

These forward-looking measures were capped in 1950 by the law which authorized the Puerto Ricans to write their own organic law. 64 Stat. 319. The Senate Committee on Interior and Insular Affairs, reporting favorably on this proposal, said:

> This measure is designed to complete the full measure of local self-government in the island by enabling the 2¼ million American citizens there to express their will and to create their own territorial government. . . .
>
> Thus, in the only Latin-American area under the American flag, which is a focal point of inter-American relations, the present measure would give further concrete expression to our fundamental principles of government of, by, and for the people. It is

a logical step in the process of political freedom and economic development that was begun even in the days of our military occupation of the island at the end of the last century.[2]

[fol. 113] When the Puerto Ricans availed themselves of the privilege afforded by this law and proceeded to adopt a Constitution, our own government acted to notify the United Nations that Puerto Rico was no longer a "non-self-governing nation" within the meaning of Article 73 (e) of the Charter. Our official communication in this regard characterized the situation as follows (28 Dept. State Bulletin 587):

> By the various actions taken by the Congress and the people of PuertoRico, Congress has agreed that PuertoRico shall have, under that Constitution, freedom from control or interference by the Congress in respect of internal government and administration subject only to compliance with applicable provisions of the Federal Constitution, the Puerto Rican Federal Relations Act and the acts of Congress authorizing and approving the Constitution, as may be interpreted by judicial decision.

The Constitution of Puerto Rico, which so came into being in 1952, described its relationship with the United

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[2] S. REP. 1779, 81st CONG., 2d Sess. The Committee took cognizance of an earlier communication to it on behalf of the Secretary of State which said:

> It is believed that, with their own constiution, the high degree of internal self-government which the Puerto Ricans today enjoy in their voluntary association with the United States, will assume for them an added significance. Moreover, such action by our government would be in keeping with the democratic principles of the United States and with our obligations under the Charter of the United Nations to take due account of the political aspirations of the people in our Territories and to develop self-government in them.
>
> In view of the importance of 'colonialism' and 'imperialism' in anti-American propaganda, the Department of State feels that S. 3336 would have great value as a symbol of the basic freedom enjoyed by Puerto Rico, within the larger framework of the United States of America.

States as in the nature of a "union." United States citizenship and freedom of movement, which are ordinarily associated with true political union, had long before been accorded to Puerto Ricans by Congress. The Jones Act in 1917 gave American citizenship to all Puerto Ricans, and permitted them free entry into this country. The Supreme Court once had occasion to characterize these provisions of the Jones Act as embodying a purpose to place PuertoRicans "on an exact equality with citizens from the American homeland, to secure them more certain protection against the world, and to give them an opportunity, should they desire, to move into the United [fol. 114] States proper and there without naturalization to enjoy all political and other rights." *Balzac* v. *Porto Rico*, 258 U.S. 298, 311 (1922).

The circumstance that Spanish has for many years been the language in which public school proceedings have been carried on is a closely-related consequence of Puerto Rico's steady march, under the Congressional aegis, towards self-government. Although Congress has never expressly directed that Spanish shall be the language of instruction, it has knowingly created and financed educational machinery which has encompassed that result. In the early years of American rule, English was employed in the public schools.[3] This caused many difficulties and local sentiment against it was strong, both for sentimental reasons and considerations of educational efficiency. Beginning in 1916, Spanish was used in the first four elementary grades, and in 1934 this was extended through the eighth grade. With the 1947 amendments to the Jones Act, the Commissioner of Education was appointed by the popularly elected Governor, and the use of Spanish was promptly extended to all grades. This has continued

[3] Under the Foraker and Jones Laws—the so-called Organic Acts—Congress vested authority over the Puerto Rican public schools in an Island Commissioner of Education. This official was a Presidential appointee from 1900 to 1947. His initial policy was to use Spanish in the first eight grades, and English in all others. This went on from 1900 to 1905, at which time English was used in all grades.

to be true since 1952 under the Puerto Rican Constitution.[4]

[fol. 115] Thus it has been that since 1934—more than 30 years—no Puerto Rican schooled in his native land has been required to become literate in English in the course of an elementary school education extending through the sixth grade—the level adopted by New York as the measure of its educational qualification. Although literate in Spanish—the language in which his schooling in Puerto Rico has been conducted—voting in New York is denied him solely because of his lack of literacy in English. Section 4(e) represents a Congressional judgment that this is not in keeping with long-standing Congressional policies towards Puerto Rico, and that the New York policy should yield to the federal.[5] That is a judgment which, in my view, Congress is entitled to make by reason of the authority and responsibility assigned to it by the Constitution to provide for Puerto Rico and its people. It is not claimed, as it cannot be, that the present status of

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[4] Although Puerto Rico has often been the recipient of funds for educational assistance voted by Congress, these grants have never been conditioned upon instruction in English and have been made knowingly in the light of the use in Puerto Rico of Spanish as the official teaching language.

[5] In the Senate, both of the New York Senators, Javits and Kennedy, who sponsored Section 4(e), stressed the inequity of denying the vote to Puerto Ricans who had been educated in Spanish as a consequence of Congressional policies. Senator Kennedy pointed out that (111 Cong. Rec. 10675):

> In school [the typical educated Puerto Rican] reads, in Spanish, the same textbooks which his fellow citizen on the mainland reads in English. That his schooling takes place in Spanish is not up to him, but is due to the fact that the U. S. Government has chosen to encourage the cultural autonomy of the Commonwealth of Puerto Rico, to make Puerto Rico a showcase for all of Latin America.

Representatives Ryan and Gilbert from New York were the House proponents of Section 4(e). They concurred in emphasizing the "anomaly" of Congressional action "to encourage the perpetuation of Puerto Rico's Spanish language culture and at the same time do nothing to protect the rights of citizenship of Puerto Ricans who move to other sections of the country." 111 Cong. Rec. 15666.

Puerto Rico has nullified completely such authority and responsibility.

[fol. 116] It may be urged that, since Section 4(e) purports on its face to be a declaration of rights under the Fourteenth Amendment, only that Amendment may be looked to as a measure of the underlying Congressional power. That may well be true if we were dealing with the statute's applicability to persons not within the reach of any other constitutional power. It does not seem to be a necessary conclusion in respect of the Puerto Ricans about whom this lawsuit has been brought and with respect to whom relief is sought. As my colleagues recognize, acts of Congress are to be approached in the first instance as if they were constitutional. Whether this be couched in the language of presumptions, or simply in terms of the comity appropriate between coordinate branches of the same government, it remains true that courts do not invalidate acts of Congress until the search for a foundation for them has been exhausted.

We are concerned here with what Congress has done, and not only with what it has said. If it chooses to characterize the voting status it has elected to confer on Puerto Rican citizens as one within the scope of the Fourteenth Amendment, the validity of that status still turns upon whether Congress can create it, not upon what Congress calls it. That power to create does not have to be discovered solely in the Fourteenth Amendment. It may or may not be there. But that is a question that need not be resolved in the context of this case, involving, as it does, Puerto Ricans who are the objects of Congressional concern under other provisions of the Constitution.

Absent an assertion of overriding federal power, it is presumably the privilege of the people of New York to [fol. 117] insist that Puerto Ricans shall, in order to vote, be literate in English. *Camacho* v. *Doe*, 7 N. Y. 2d 763 (1959); and see *Lassiter* v. *Northampton Election Board*, 360 U.S. 45 (1959). But with the enactment of Section 4(e), a new element is added; and thereafter it is the function of the Supremacy Clause to elevate Congressional policy over New York policy, valid and enforceable

though the latter may formerly have been.[6] If it be said that Art. IV, § 3, is to be read narrowly as limiting Congress to making the rules whereby life is to be carried on in Puerto Rico, the answer is that it has not been so regarded. At least one of the Insular Cases, *Downes* v. *Bidwell*, 182 U. S. 244 (1901), dealt with the regulation of Puerto Rico's external trade by means of the imposition of duties at American ports of entry. Justice Brown, in an opinion supporting the decision that such duties could be imposed by Congress in the exercise of its powers under the territorial clause, characterized that clause as "absolute in its terms, and suggestive of no limitations [fol. 118] upon the powers of Congress in dealing with (the territories)." Admittedly, Article IV, Section 3, is terse,[7] and its reach must be defined primarily by refer-

[6] The challenge here made to Section 4(e) goes mainly to the existence of Congressional power, and not to the propriety, in terms of reasonableness, of this particular exercise of it. This emphasis is tactically well-advised, since there would appear to be little doubt on the latter score. Other states having large non-English-speaking elements have not emulated New York in barring them from voting. In Hawaii, persons literate either in English or Hawaiian may vote, Rev. Laws of Hawaii (1955), Sec. 11-8. The Louisiana Constitution has long required as a voting qualification only literacy either in English or a mother tongue. New Mexico, in deference to its large Spanish-speaking population, has no English literacy requirement and prints its ballots and instructions in both Spanish and English. N. Mex. Statutes (1953), §§ 3-3-7, 3-3-12, 3-2-41. Thus the impact of Section 4(e) in New York is one which Congress might well have viewed with equanimity, especially in the light of the national interests which it was thought to advance.

[7] The reason why the "question of territories was dismissed with a single clause" was not, in Justice Brown's view, far to seek. It lay in the fact that "the vast possibilities of that future (of the geographical sway of the Constitution) could never have entered the minds of its framers. The States had but recently emerged from a war with one of the most powerful nations of Europe; were disheartened by the failure of the confederacy, and were doubtful as to the feasibility of a stronger union. Their territory was confined to a narrow strip of land on the Atlantic coast from Canada to Florida, with a somewhat indefinite claim to territory beyond the Alleghenies, where their sovereignty was disputed by tribes of hostile Indians supported, as was popularly believed, by the British, who had never formally delivered possession under the

ence to the wisdom and necessity of its manifold applications in the light of what the Framers would have intended could they, in Justice Brown's phrase, have "foreseen that, within little more than one hundred years, we were destined to acquire not only the whole vast region between the Atlantic and Pacific Oceans, but the Russian possessions in American and distant islands in the Pacific . . ."

An expansive view of the sweep of Congressional authority under the territorial clause has been the rule in Supreme Court interpretation of it in lawsuits presenting [fol. 119] a wide range of issues.[8] The conspicuous exception was Chief Justice Taney's opinion in *Dred Scott* v. *Sandford*, 60 U.S. 393 (1956), and that is not widely regarded as one of the Court's happier forays into constitutional exegesis. The power seems to me to be, and

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treaty of peace. The vast territory beyond the Mississippi, which formerly had been claimed by France, since 1762 had belonged to Spain, still a powerful nation, and the owner of a great part of the Western Hemisphere. Under these circumstances it is little wonder that the question of annexing these territories was not made a subject of debate. The difficulties of bringing about a union of the States were so great, the objections to it seemed so formidable, that the whole thought of the Convention centered upon surmounting these obstacles. . . ." 182 U.S. 284, 285.

[8] Statements are legion that Congress has broad powers over the territories and their inhabitants. *Hooven & Allison Co.* v. *Evatt*, 324 U.S. 652, 674 (1945); *Public Utility Comm'rs* v. *Ynchausti & Co.*, 251 U.S. 401, 406 (1920); *Binns* v. *United States*, 194 U.S. 486, 491 (1904); *Dooley* v. *United States*, 183 U.S. 151, 157 (1901). Such power has been explained as being required by the special problems created by the territories and the need for flexibility in dealing with them. *Balzac* v. *Porto Rico*, 258 U.S. 298 (1921); *Dorr* v. *United States*, 159 U.S. 149 (1904); *Hawaii* v. *Mankichi*, 190 U.S. 197, 218 (1903). Legislation by Congress pursuant to the territorial clause, and by territorial legislatures deriving their authority from the Congressional power, has frequently been sustained in circumstances where constitutional limitations might otherwise have been insuperable. *Balzac* v. *Porto Rico, supra; Public Utility Comm'rs.* v. *Ynchausti & Co., supra; Dowdell* v. *United States*, 221 U.S. 325 (1911); *Dorr* v. *United States, supra; Hawaii* v. *Mankichi, supra; Dooley* v. *United States, supra; Downes* v. *Bidwell*, 182 U.S. 244 (1901); see *Raband* v. *Boyd*, 353 U.S. 427, 432 (1957).

to have been intended to be, commensurate with all legitimate and relevant objects of national concern in our relationships with our territories and their peoples, and with the world at large. Assuring our Puerto Rican citizens a right to vote under the circumstances disclosed in this record could rationally have been deemed by Congress to be such an object. As such, its accomplishment by the vehicle of Section 4(e) is not beyond the range of Congressional power.

[fol. 120]

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

[File Endorsement Omitted]

Civil Action No. 1915-1965

JOHN P. MORGAN & CHRISTINE MORGAN, PLAINTIFFS

v.

NICHOLAS deB. KATZENBACH, as Attorney-General of the United States, the UNITED STATES, and the NEW YORK CITY BOARD OF ELECTIONS, consisting of James M. Power, Thomas Mallee, Maurice J. O'Rourke, and John R. Crews, DEFENDANTS

ORDER AND JUDGMENT—December 7, 1965

Upon consideration of the Plaintiffs' motion for summary judgment, and the Defendants' cross-motion for summary judgment, and upon the written opinion delivered by this Court dated November 15, 1965, and for the reasons therein stated, it is

ORDERED, that the Defendants' cross-motion for summary judgment be, and the same hereby is, denied, and it is further

ORDERED, that the Plaintiffs' motion for summary judgment be, and the same hereby is, granted, and it is

ORDERED, that defendant Katzenbach be, and he hereby is, enjoined from taking any steps to enforce Section 4(e) of the Voting Rights Act of 1965, or to execute the same, and it is ORDERED, that the Defendants constituting the New York City Board of Elections be, and they hereby are, enjoined from giving any effect to the said Section 4(e) of the Voting Rights Act of 1965, and it is

~~ORDERED, that the Defendants constituting the New~~ York City Board of Elections shall, not later than February 1, 1966, inform the attorney for the plaintiffs herein whether the number of persons registered to vote on account of Section 4(e) of the Voting Rights Act of 1965 who were ineligible to vote according to New York State law, and who actually voted in the elections held in New York City in November, 1965, for any office voted on therein, insofar as this can be ascertained, exceeded in any such case the plurality of any person elected in that election, and which such persons, and it is ORDERED, that based on this information plaintiffs shall have leave to apply for usch ancilliary relief as they may be advised, ~~and it is~~

ORDERED, that a declaratory judgment be, and hereby is, granted, that Section 4(e) of the Voting Rights Act of 1965 is unconstitutional, ~~and it is~~

~~ORDERED, that the Clerk be, and he hereby is, directed to enter this Order as a Judgment without further notice.~~

Dated December 7, 1965

" " "

U.S.C.J.

/s/ Alexander Holtzoff
U.S.D.J.

/s/ Joseph C. McGarraghy
U.S.D.J.

[fol. 121] [CERTIFICATE OF SERVICE]

* * * *

[fol. 122]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 1915-65

[File Endorsement Omitted]

[Title Omitted]

NOTICE OF APPEAL—Filed December 13, 1965

I. Notice is hereby given that Nicholas deB. Katzenbach, as Attorney General of the United States, and the United States, defendants above named, hereby appeal to the Supreme Court of the United States from the order entered in this action on December 7, 1965.

This appeal is taken pursuant to 28 U.S.C. Sections 1252 and 1253.

[fol. 123] II. The clerk will please prepare a transcript of the record in this cause, for transmission to the Clerk of the Supreme Court of the United States, and include in said transcript the entire record below, including all pleadings, motions, transcripts of arguments, opinions, and orders of the District Court, and this notice of appeal.

III. The following question is presented by this appeal:

Whether Section 4(e) of the Voting Rights Act of 1965 is constitutional.

/s/ John Doar
JOHN DOAR
Assistant Attorney General

/s/ David G. Bress
DAVID G. BRESS
United States Attorney

/s/ St. John Barrett
ST. JOHN BARRETT
Attorney
Department of Justice

/s/ Peter S. Smith
PETER S. SMITH
Attorney
Department of Justice

[fol. 124]

[CERTIFICATE OF SERVICE Omitted in printing]

[fol. 125]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 1915-65

[File Endorsement Omitted]

[Title Omitted]

MOTION FOR A STAY OF THE ORDER AND JUDGMENT IN THE ABOVE-ENTITLED CASE DURING THE PENDENCY OF AN APPEAL TO THE SUPREME COURT OF THE UNITED STATES—Filed December 13, 1965

Come now Nicholas deB. Katzenbach, as Attorney General of the United States, and the United States, defendants in the above-entitled case, and file this motion for a stay of the order and judgment of this Court of December 7, 1965, during the pendency of an appeal to the Supreme Court of the United States, for the following reasons:

[fol. 126] 1. In holding that "Section 4(e) of the Voting Rights Act of 1965 is unconstitutional," this Court has exercised "the gravest and most delicate duty that . . . [a] Court is called on to perform." *Blodgett* v. *Holden*, 275 U.S. 142, 147-148 (opinion of Mr. Justice Holmes). The order of this Court forbids the Attorney General, the Nation's chief law enforcement officer, from enforcing a congressional enactment. The gravity of such an order makes it appropriate to stay its implementation until the Supreme Court, the final arbiter of such questions, is given the opportunity of review.

2. Staying an order which forbids the Attorney General to enforce a congressional enactment is particularly appropriate in the circumstances of this case since there clearly can be no irreparable injury to plaintiffs if such an order were granted. Should the Supreme Court affirm this Court's decision, it will be a simple process for the Board of Elections to

strike from the rolls those individuals who, in the interim, became registered by taking advantage of the provisions of Section 4(e) of the Voting Rights Act. On the other hand, should the order of this Court not be stayed, there is a substantial likelihood of irreparable injury to persons who might otherwise have registered under Section 4(e). The registration offices in New York City are open on a year-round basis. Hence many persons desiring to register in the coming months will be refused that [fol. 127] opportunity. Once denied the opportunity, they might find it inconvenient, or be discouraged from making another attempt months later, should the Supreme Court sustain the validity of this congressional enactment.

For the foregoing reasons, the defendants, Nicholas deB. Katzenbach and the United States, respectfully request this Court to stay its order and judgment of December 7, 1965, during the pendency of an appeal to the Supreme Court.

/s/ John Doar
JOHN DOAR
Assistant Attorney General

/s/ David G. Bress
DAVID G. BRESS
United States Attorney

/s/ St. John Barrett
ST. JOHN BARRETT
Attorney
Department of Justice

/s/ Peter S. Smith
PETER S. SMITH
Attorney
Department of Justice

[fol. 128]

[CERTIFICATE OF SERVICE Omitted in printing]

[fol. 129]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 1915-65

[File Endorsement Omitted]

[Title Omitted]

NOTICE OF APPEAL—Filed December 20, 1965

I. Notice is hereby given that the New York City Board of Elections, consisting of James M. Power, Thomas Mallee, Maurice J. O'Rourke, and John R. Crews, defendants above named, hereby appeal to the Supreme Court of the United States from the order entered in this action on December 7, 1965.

This appeal is taken pursuant to 28 U.S.C. Sections 1252 and 1253.

II. The clerk will please prepare a transcript of the record in this cause, for transmission to the Clerk of the Supreme Court of the United States, and include in said transcript the entire record below, including all pleadings, motions, transcripts of arguments, opinions, and orders of the District Court, and this notice of appeal.

[fol. 130] III. The following question is presented by this appeal:

Whether Section 4(e) of the Voting Rights Act of 1965 is constitutional.

/s/ Leo A. Larkin
LEO A. LARKIN
Corporation Counsel of the
City of New York

/s/ Morris Einhorn
MORRIS EINHORN
Assistant Corporation Counsel of
the City of New York

[fol. 131]

[CERTIFICATE OF SERVICE Omitted in printing]

[fol. 132] • • •

[fol. 133]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 1915-65

[File Endorsement Omitted]

[Title Omitted]

MEMORANDUM ORDER GRANTING STAY OF ORDER AND JUDGMENT—December 21, 1965

Motion of the defendant Attorney General and the defendant United States for a stay of the enforcement of the order and judgment of this Court, is granted on condition that the defendant Members of the New York City Board of Elections maintain a separate roster of all voters who qualify pursuant to the provisions of Section 4 (e) of the Voting Rights Act of 1965 and are registered thereunder, during the pendency of the appeal.

/s/ Alexander Holtzoff
U.S.D.J.

/s/ Joseph C. McGarraghy
U.S.D.J.

/s/ Carl McGowan
U.S.C.J.

December 21, 1965.

[fol. 134]

[Clerk's Certificate to foregoing transcript omitted in printing.]

[fol. 135]

SUPREME COURT OF THE UNITED STATES

Nos. 847 and 877, October Term, 1965

NICHOLAS DEB. KATZENBACH, Attorney General of the United States, et al., APPELLANTS

v.

JOHN P. MORGAN AND CHRISTINE MORGAN

NEW YORK CITY BOARD OF ELECTIONS, ETC., APPELLANT

v.

JOHN P. MORGAN AND CHRISTINE MORGAN

APPEALS from the United States District Court for the District of Columbia.

ORDER NOTING PROBABLE JURISDICTION—
January 24, 1966

The statements of jurisdiction in these cases having been submitted and considered by the Court, probable jurisdiction is noted. The cases are consolidated and a total of two hours is allotted for oral argument.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1966 203760 842